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A

HANDY BOOK

ON

THE LAW OF

BILLS, CHEQUES, NOTES,

AND

I O U'S;

CONTAINING NEW STAMP ACT.

BY

JAMES WALTER SMITH, ESQ., LL.D.,

Of the Inner Temple, Barrister-at-Law,

Author of Handy Books on "Joint-Stock Companies," "Partnership,' "Banking," "Master and Servant," "Bankruptcy," and "Husband and Wife."

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MERCHANT OF VENICE.

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London:

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1880.

PREFACE.

THE object of the following treatise is to supply to the commercial world, and to the general public, what has hitherto been wanting—a cheap and compendious code of the law of inland negotiable instruments. This work, being chiefly meant for the guidance of men in business, does not, by its title, pretend to supply the place of the full and elaborate treatises, which are necessary to the practitioner; to whom, however, as well as to the student, this volume, from its brevity, may, perhaps, be useful.

The Law has been succinctly stated, as well in accordance with Statutes and decisions, as with the principles which guide the Courts; but it has not been considered necessary to refer, by name or quotation, either to the one or to the other.

The law as to cheques is stated in chap. xxi, sec. 11, in accordance with the modifications introduced by the Act of the 2d of August, 1858, which was passed to settle doubts arising from the former statutes and a decision thereon.

The division of every chapter into numbered sections, (each of which is frequently subdivided into several paragraphs,) and the reference at the head of the chapters to the subjects treated of in each section, will, it is hoped, serve so to facilitate perusal as to render an Index unnecessary. Nevertheless an Index has been added.

It is believed that the APPENDIX on Forms and Stamp Duties (though the humblest portion of the work) will be of considerable service.

For those who are entirely unacquainted with negotiable instruments, an explanation of many of the technical terms used with reference to them is given in chap. i, sec. 1.

J. W. S.

6, CROWN OFFICE ROW.

CONTENTS.

To facilitate reference, each chapter has a table of its contents prefixed.

CHAPTER I.

INTRODUCTORY,

OF BILLS AND NOTES, AND THE PARTIES TO THEM.

1. *Of a Bill of Exchange, and the names and relations of the parties thereto.*

2. *Of a Promissory Note, and the names and relations of the parties thereto.*

3. *How Bills and Notes are made payable, and therein of indorsement.*

4. *The Acceptor primarily, and other parties secondarily, liable.*

5. *The same of the maker of a Note.*

1. A bill of exchange is an unconditional written order addressed by A to B, directing him to pay a sum of money, named therein, to C.

In this case, A (who is called the *drawer* of the bill) is said to draw upon B, who is, therefore, called the drawee; and C, the person to whom the money is to be paid, is on that account called the *payee.*

The drawer may be himself the payee, and he may direct B to pay him simply, (as by the words "*pay to me,*") or to pay to him or his order, (as by the words "pay to me or my order.") [See Appendix—Forms.]

The drawer having written this order, it should be presented to the drawee to receive his assent. If the drawee assents to it, he (in this country) testifies such assent by writing his name across it (see the forms above referred to), which is called accepting the bill or draft, after which the drawee is called the *acceptor.* If he refuses to accept, he is said to *dishonor* the draft or bill by non-acceptance.

When a person, in order to transfer his interest in a bill, writes his name on the back, he is called an *indorser,* and the person to whom his rights are so transferred is called an indorsee. Bills are often indorsed when the interest in them would pass without such indorsement, but in many cases it is necessary to indorse a bill in order to pass an interest therein; as if the bill be pay-

able to the drawer or his order, the drawer must indorse in order to transfer his interest, and if the bill be payable to C or his order, C must indorse.

The drawer and C would in these cases be called *indorsers*, and the persons taking from them *indorsees*.

When no such indorsement is necessary to transfer the interest in the bill, it is said to be payable *to bearer;* and a person transferring without indorsement is simply called the *transferor*, and the person who takes from him the *transferee*.

The *holder* is, in the words of Mr. Justice Byles, "the person in actual or constructive possession of the bill, and entitled at law to recover its contents from the parties to it."

2. A promissory note is a written promise by A to B, to pay to B, or to B or his order, a specified sum on demand, or at a certain time. The person giving the promise is said to be the *maker* of the note, and occupies a position resembling that of the *acceptor* of a bill; and the words *transferor* and *transferee*, *indorser* and *indorsee*, and *holder*, are applicable with reference to notes, the same as to bills of exchange.

An ordinary bank note is a banker's promissory note.

3. Bills of exchange, being intended for the transfer and transmission to third parties of debts due by one man to another, the drawer is supposed to be the creditor of the drawee, who is presumed to have in his hands effects of the drawer which the latter is desirous of transferring.

An ordinary banker's cheque is a bill of exchange payable to bearer on demand.

It is therefore for the drawer to consult his convenience as to how he shall direct the drawee to pay the money (1), at what time, or (2), at what place, and (3), to whom.

For instance, the bill may be payable (1) at sight, six months after date or after sight; (2), in London, or at Drummond's bank; (3), to the drawer or his order.

Instead of directing the drawee to pay to the drawer or his order, the drawer may make the bill payable to a third person (naming him), or to such person or his order, or to bearer.

If the bill is not payable to the payee's order, it is not negotiable, and is of no use except to the payee. If it is payable to the payee's order, the payee, in order to transfer his right to it, must indorse it, and the person to whom

he gives it will take the money on the bill at maturity, by virtue of the order testified by the indorsement.

If the indorsement be by simply writing the indorser's name, as is usual, the bill is then payable to bearer, and passes by delivery; though at each successive delivery an indorsement is often required for the security of the transferee.

The same rules apply where the bill is payable to the drawer or his order.

If the drawee is directed to pay "to bearer," the bill *needs* no indorsement to confer a title to the money, though indorsements are often given as the bill changes hands.

Promissory notes may be made payable in the same way as bills, and with the same results.

4. The acceptor is the person who is to be liable to the drawer on a bill, so long as it remains in the drawer's hands, and is *always* the person *primarily* liable (a term to be presently explained, see chap. xii); and when the drawer, by indorsement (which is in general necessary), transfers the bill to another, the drawer in his turn becomes liable, with the acceptor, to the holder of the bill, and so does every subsequent indorser, the security thus increasing with each indorsement.

The drawer is also liable upon every unaccepted draft of his which he transfers, for by so doing he makes an implied undertaking that upon presentment to the drawee it shall be accepted.

5. The maker of a note occupies a position similar to that of an acceptor of a bill, being the person *primarily liable*, and when the note is transferred by indorsement by the payee, the indorser likewise becomes liable to the holder of the note, as does every subsequent indorser. (As to the nature of *joint* and *joint and several* notes, see chap. xix, sec. 1.)

As all these parties have different rights and liabilities, it will be convenient to treat those of each one separately; but before doing so it is necessary to make some general observations upon the power which different classes of persons have in law to bind themselves or others by becoming parties to bills or notes; for it is most important to every one who deals with these instruments to know the real position of those who may be liable to or with him.

Persons incurring such liability, whether on behalf of themselves or others, are said, in legal language, to

Contract; and the power to do this will be the subject of the next chapter.

CHAPTER II.

OF THE POWER OF PARTIES TO CONTRACT, AND THEREIN OF AGENCY AND PARTNERSHIP.

1. *Importance of the Subject to those who have dealings with Bills.*
2. *Disqualification of Infants, Married Women, Insane Persons, Idiots, Persons Drunk.*
3. *Agents, how appointed.*
4. *Of authority to an Agent, divided into* real (*whether express or implied*) *and* presumptive.
5. *How to ascertain whether a man is authorized to act as Agent.*
6. *Of limited and general Agency.*
7. *Of presumptive Agency, whether limited or general.*
8. *Authority of general Agent presumed to continue.*
9. *How Agent can bind Principal, and how bind himself.*
10. *Rights of Principal and Agent respectively to sue.*
11. *Of* Partnership, *and the mutual Agency of Partners.*
12. *Of the various kinds of Partners, and how they can bind or be bound by one another.*
13. *Of* Dissolution,—*how it affects the power of one Partner to bind another.*
14. *Miscellaneous matters connected with the above subjects.*

1. Bills and notes are one kind of *contract.*

It is easy to decide how a bill or note shall be made payable; but it is far more important to be able to know how far the persons who are to be parties to these instruments are by law capable of contracting, so as to bind themselves or others.

Every one who contemplates dealing with a bill or note should carefully consider whether those who are already, or are about to become, parties to the instrument are capable of binding themselves; or, if they sign as agents for others, whether they are capable of binding those others.

2. I will first mention the disqualifications attaching upon the person of a contracting party in his individual capacity. I say 'upon his person,' because there are certain classes of people who are by law wholly or partially incompetent to contract; and I say 'in his indi-

vidual capacity,' because one who cannot bind himself may yet be an agent to bind another.

An infant, *i. e.* a person under full age, cannot bind himself or herself by a bill or note, unless it be merely for the price of necessaries, and not carrying interest.

Married women cannot bind themselves unless they are carrying on business as sole traders according to the custom of London; or have separate property under "The Married Women's Property Act, 1870;" or have separate property vested in trustees for them, in which latter case the proceedings must be in a court of equity.

Insane persons are under disability to contract only *while* they are insane, unless they have been declared lunatics under a commission of lunacy, in which case the commission must be superseded before any valid contract can be made with them even during a lucid interval.

Idiots are persons who never have sufficient wits to be of a contracting mind, so that although they may go through an exterior form of contracting, as by making a mark, yet no actual contract can be made with them.

Persons who are drunk, or whose mental faculties are by some accident materially impaired, whether for a long or a short time, are, during such states, incapable of contracting.

But, though infants and married women in general cannot bind themselves, yet they may be agents for others so as to bind those others; and a married woman may be an agent as well for strangers as for her husband. So, indeed, might a lunatic bind people who were foolish enough to employ him.

It may here be observed that if an acceptance be taken from an infant for a debt which he owes, he will, though not bound by the acceptance, be entitled to credit, like any other person, for the time the bill has to run, during which he cannot be sued either on the bill or on the original debt.

3. But to ascertain whether a person is capable of personally binding himself is generally far easier than to discover, in cases where he affects to act as agent, whether he is capable of binding those whom he pretends to represent. This, which at first sight would appear simple, will be found to require careful attention.

It is scarcely necessary to say that where one man appoints another his agent, (which may be by word of mouth as well as by writing, and no particular form is

necessary,) the agent becomes able to bind his principal as to all matters within the scope of his authority. We are not speaking now of contracts under seal, *i. e.* by deed, to execute which the agent must be appointed by deed, for this work does not treat of any contracts which come under that class.

4. But it is not merely by virtue of an *actual* authority that one man becomes able to bind another; for A may hold such a position with regard to B, as that without such authority to act as agent, nay, in the face of an express contract *not* to act as agent, A will be presumed by the law to have authority so to act, and will be capable of binding B in contracts made by all persons who are not aware of the actual arrangement between A and B.

In other words, a man who is not actually an agent, may be an agent to the world, though in so acting he be exceeding his authority, or even be guilty of a breach of contract as between himself and his supposed principal.

Authority, therefore, is divided into *real* and *presumptive;* real being where a man has actually or impliedly authorized another to do certain acts; and presumptive being where a man by his conduct holds out another as being authorized to bind him: for whether that other be really authorized or not, the public have under certain circumstances a right to conclude that such authority exists.

In fact, real authority arises from the act of the principal, and presumptive authority from the appearances held out to the world. And both these kinds of authority may be either *limited*, *i. e.* as to time, particular acts, or mode of business, or *general*, *i. e.* extending to all acts connected with the principal's affairs at all times. If the supposed agent acts without, or exceeds his real authority, and has no presumptive authority, he alone is liable.

5. In case of doubt whether a man has real authority or not, the best course, where practicable, is to ask his principal. Where the alleged authority is in writing, and is shewn to you, you must judge for yourself of its sufficiency, and whether the act which the agent proposes to do is within its scope.

There are many cases where you may be quite sure that a man is agent for another for *some* purposes, as in the case of clerks, foremen, attorneys, &c.; but you are not entitled to presume from the situations of those persons that they are capable of binding their employer in bill transac-

tions; you must therefore be satisfied before dealing with them that they have a distinct authority, or a presumptive one, from a ratification of their former dealings.

6. An agent may have a special or limited authority referring to a single bill or note, or he may have a general authority to become a party to all bills or notes: clerks, and foremen at home, and other agents at a distance, are often general agents. A general authority to transact business does not enable the agent to bind his principal by accepting or indorsing bills. And special or limited authorities to accept or indorse are construed strictly.

7. We will now pass on to the cases of presumptive authority; that is, cases where, not knowing whether a man is authorized or not, you may presume that he is so.

Authority may be presumed from custom and acquiescence; as where A had been in the habit of indorsing and accepting for B in his name, and B had recognized A's acts, (as by paying the bills or otherwise,) B cannot defend an action on one of A's acceptances, on the ground that it is a forgery. And it is a question for a jury whether a man has held out another to the world as his agent by thus ratifying and adopting his acts.

Where an agent proposes to indorse bills which are already in his hands, it is quite as important to inquire into his authority, as if he were about to draw or accept a bill; for, unless he be authorized, the only person bound by such indorsement will be the agent himself.

This refers to bills payable to order; if, however, the bills are payable *to bearer*, the agent may be presumed to have authority to transfer. But in whatever way the bills are payable, the transferee, if he knows the agent has no authority to transfer, cannot recover on the bills.

And when *overdue* bills, even though payable to bearer, are improperly transferred by an agent, the transferee cannot recover upon them, though he were ignorant of the absence of authority to transfer. The fact of their being overdue should put the transferee upon his enquiry; —he takes them at his peril.

8. When a *general* agent is once constituted, his authority is presumed to continue till notice is given of its revocation. When a customer has dealt with a principal through an agent, or has become acquainted with the fact of his agency through business transactions, the customer is entitled to presume that the agency continues, until he has individually received notice that it has ceased. To

persons who have not had such dealings with the firm, notice in the *Gazette* is sufficient.

9. An agent cannot appoint another person to act for him, unless specially authorized to do so.

An agent putting his name to a bill or note, does so either by writing his principal's name alone, or with the addition of his own.

If he omit to write his principal's name, his principal is not bound.

If the principal's name be written by a pretended agent, without authority, the principal is not bound.

If the agent write his own name as well as his principal's, he is bound as well as his principal, unless the agent's ministerial character clearly appear by the addition of such words as "per procuration," "sans recours," or "but only as agent for C. D.," &c. Where a bill drawn on a company was accepted by their agent, thus—"Accepted, per H. B.," and where another drawn on a mining company was accepted by the purser, thus—"Accepted, W. C., Purser," the additions to the names were considered to be mere matter of description, and the agent was held to be personally liable.

Neither the general agent, or the purser, of a cost-book mining company can sign bills or notes so as to bind the company, but they themselves will be bound.

10. An agent holding a bill or note may sue and recover upon it the same as the principal; but if the principal cannot recover, no more can the agent.

So a principal, though his name do not appear on the bill or note, may take the benefit of it, if it be held for him by his agent; but is subject to any defence that might be set up against his agent. Thus, where a principal delivered a bill to his agent to be discounted, and the agent treated it as his own, and the transferee who discounted it only paid the agent a part of the money, the principal was held entitled to recover the remainder of the money from the discounter. But in that case, if the defendant, the discounter, had had a set-off against the agent, it could have been successfully pleaded against the principal.

11. The most important kind of agency, and that concerning which the greatest number of disputes arise, is the agency which one partner exercises for another.

A partnership, it is important to observe, takes place whenever two or more persons participate, or are entitled to participate, in the profits of an undertaking.

In every mercantile undertaking each partner is an agent capable of binding his co-partners in partnership transactions, by becoming a party to bills or notes in the name of the firm.

I have said "in a mercantile undertaking," for where the partnership is for other purposes, as for instance in case of farming, medical, and law partnerships, one partner cannot bind his co-partners by bills or notes.

A partner in a cost-book mine cannot bind his co-partners by bills.

I have said "in the name of the firm," for the ordinary name of the firm must be signed on the instrument without any substantial variation.

If a bill be accepted, or a note made by a partner in his own name, the firm will not be liable to the holder, although the proceeds were applied to partnership purposes.

12. Whatever agreement may have been made among the partners, persons not aware of its nature may always presume that each partner has authority to bind the others by bills or notes. It will always be safe, therefore, for persons so circumstanced to take a bill or note on which the name of the firm is written by one of the partners.

There are four kinds of partners, (1) ordinary, (2) dormant or secret, (3) retired, and (4) ostensible or nominal.

The presumption of authority to bind the two last-mentioned classes only arises under certain circumstances.

Ordinary partners are those who participate, or are entitled to participate, in the profits of the firm, and are recognized in that capacity.

Dormant partners are those who take a part of the profits without being ostensibly members of the firm.

Retired partners are those who have ceased to take or be entitled to the profits of the firm, directly or indirectly.

Ostensible partners are those who, by word or act, have held themselves out as partners, whether they are so or not.

Dormant partners will be bound, though the person dealing with the firm is not aware of the existence of such partners at the time of the contract.

Retired partners will be bound, unless the person dealing with the firm has notice of their retirement. This notice should be given to customers individually, and it is usual to apprize the public by means of a notice in the *London Gazette*. This notice, however, is by no means necessary, for there are many other circumstances, such as a change of names over the door, or on the invoices, or, in case of

bankers, on the cheques, &c., from which it will be presumed that those acquainted with the place of business, or who had seen the invoices, or in case of bankers the altered cheques, knew of the change in the firm.

Ostensible partners, (that is, those who are *merely* ostensible partners,) are only liable *to those* to whom they have been held out as partners.

We will endeavour to illustrate the different rights which a contracting party may have against a dormant and an ostensible partner.

If at the time you deal with the firm of "A and B," you know that C is a dormant partner, and that D is an ostensible partner in the firm, they are of course both liable to you. But if, after you have taken an acceptance of "A and B," you *discover* that C is a dormant partner, and that D has been acting as a partner, you may treat C as liable to you on the acceptance, for he has been receiving, directly or indirectly, a portion of the profits of the firm, which is the fund to which creditors look for payment. But you cannot make D liable, who was, in the case supposed, *merely* an *ostensible* partner, for the only ground on which he could be liable to you was that you contracted with him and on his credit, and that you did not do, for you did not know him as a partner.

To put it shortly: the man who is really a partner is liable, though he was not known to be a partner; and the man who holds himself out as a partner is liable to those who thought him one, whether he was one or not.

Thus there are two classes of persons who are liable on a bill or note signed in the name of the firm.

(1.) Those who participate, or are entitled to participate, in the profits of the concern.

(2.) Those on the strength of whose credit a person *may* have contracted.

As regards the firm, a partner may have no *right* to pledge the credit of his co-partners, but he has the *power* to do so; and it is unnecessary here to consider the consequences of a breach of the agreement which the partners have made with one another.

A retired partner is, as regards those who knew of his retirement, only liable upon bills and notes signed while he remained a partner.

A joining partner is only liable upon bills and notes signed *after* he has joined the firm.

13. We have hitherto considered the doctrine of agency

as regards partners in a still subsisting firm ; we will now treat shortly of the power which, after a dissolution, a partner may have of binding his late co-partners.

There is no charm in the word "dissolution ;" for as a partnership may be originally created by a common consent of two or more persons, with or without a deed or written agreement ; so, if there has been a deed or written agreement between the partners, and such instrument has been cancelled, and even a deed of dissolution executed, yet the partnership may still subsist by a common consent, or, what comes to the same thing, a new partnership may by such consent be straightway created. And after a dissolution, one partner may be so intrusted by his late partners with the management of affairs, that, even with those who know of the dissolution, he may be able to bind the late firm by contracts made in their name. But, independently of any consent on the part of his late partners, each member of the dissolved firm can, as will be seen, under certain circumstances, bind his late co-partners.

After a partnership is dissolved, a dissolving partner has no longer any right to pledge the credit of the firm. To avoid doing so is his duty to his late co-partners. His *power* as regards the public is as follows :—

As regards those who know of the dissolution, a partner is no longer able to bind his former partners ; but to those who do not know of it, each partner occupies the same position as a nominal or ostensible partner did before the dissolution, *i. e.* each will be liable to those who may contract upon his credit.

For this reason it is usual upon a dissolution to give express notice of the fact to those who have been customers or correspondents of the firm, and to give notice to the world by advertisements in the *Gazette* and other papers, which will be always sufficient as to those who have not been customers, and will be *prima facie* evidence that even customers knew of the dissolution.

If a bill be accepted by an ex-partner in the name of the dissolved firm in favour of a person who has no notice of the dissolution, such person has not only himself a right to sue, but his transferee, though taking the bill *with* notice, will have a like right.

14. Notice to one partner is considered by the law to be notice to all ; so that a bill improperly accepted by

an ex-partner in the name of the dissolved firm in favor of another firm, of whom *one* knew of the dissolution, could not be sued upon by the latter firm.

A dormant or secret partner, whose liability arises solely from his right to participate in the profits (see sec. 12), cannot after a dissolution be bound by the acts of an ex-partner; for, with the dissolution, the cause of the liability has wholly ceased.

The estate of a deceased partner is never liable upon contracts made by the surviving partners after his death.

In taking from an ex-partner a bill belonging to a late firm, it will be well to have the separate name of each partner, or else to see that the partner putting the name of the firm to the bill has actual authority to do so.

A shopman, a foreman, a clerk, or a wife, has not, as such, authority to pledge a man's credit by putting his name to a bill; but there is often not only an express authority to such persons, but a presumed one arising from ratification or payment of bills already drawn, indorsed, or accepted by such persons, as the case may be.

An authority to indorse does not include an authority to draw, and *vice versa;* and neither amount to an authority to accept.

Notes are on the same footing as bills with regard to authority, actual and presumed.

CHAPTER III.

OF CONSIDERATION.

1. *What it is.—Presumed in Bills and Notes.—Rule as to necessity of it.*
2. *Accommodation Bills; how far no Consideration a Defence.*
3. *Fraud & Illegality of Consideration; how far a Defence.*
4. *What constitutes Consideration, Fraud, and Illegality.*
5. *Of a subsequent fatal failure of Consideration.*
6. *Fraud; what, and how far a Defence.*
7. *Illegal Consideration; what and how far a Defence. Bills and Notes for future cohabitation, for procuring marriages or separations, in restraint of trade; gaming, wagering, and stockjobbing, &c.*
8. *Table illustrating the different defences treated of.*

1. A consideration is some benefit given, or promise

made, or loss suffered by the plaintiff to or for the defendant.

It is necessary for a plaintiff suing on contracts or promises, whether made by word of mouth or in writing, (unless by deed, *i. e.* under seal,) to prove a consideration to have been given for them.

Bills and notes are exceptions to this rule; for where a bill or note is given, a consideration will be presumed to have passed, till the contrary is made probable; and to do this rests with the person sued on the bill.

For instance, if A has drawn upon B, and he has accepted the bill, and A then sue him upon it, it is B's business to shew by his witnesses, or by cross-examination of A, and those called by him, that the acceptance was given not for value, but for the accommodation of A, and to enable him to obtain money from other parties.

Although consideration is presumed to have been given for a bill or note, yet, under certain circumstances, to be presently explained, a defence may be made out by shewing either,

1. The absence of consideration.

2. That the bill or note was obtained by *fraud.*

3. That it was given in pursuance of an illegal contract, *i. e.* on an illegal consideration.

The rule regarding the necessity of consideration is this: Where a person gives a bill gratuitously to another, either by way of accepting it for his accommodation, or indorsing to him another bill, if the accommodating party is afterwards sued on the acceptance or indorsement, it will be a sufficient answer to the action that the plaintiff gave no consideration for the bill or note.

2. Accommodation bills and notes being, however, meant for the person accommodated to obtain money upon, the latter can by indorsing them to another party for value, entitle him to recover both against the party accommodating and the party accommodated.

For instance, suppose a bill accepted gratuitously (which we will call an "accommodation bill,") were indorsed by the drawer in whose favor it was accepted, to a third party *for value*, such party can recover upon the bill as well against the gratuitous acceptor as against the drawer who indorsed it. And, to go one step further, suppose the indorsee for value, instead of being the plaintiff, were to transfer the bill gratuitously, his transferee would be able to stand in his place, and the transferee might suc-

cessfully sue all the parties to the bill, except his gratuitous transferor.

From this it will be seen that any person may sue upon a bill or note, who has either himself given value for it, no matter to whom, or deduces his title from some one who has; and any person may be sued on a bill either if he has received value for it, no matter from whom, or if the plaintiff has given value, or deduces title from one who has.

Therefore where a person, who has gratuitously drawn, accepted, or indorsed a bill, or made or indorsed a note, is sued upon it, it is necessary for him to allege in his plea, and to prove, *not only* that it was an accommodation bill, *but* that the plaintiff and those through whom he deduces his title gave no value for it.

If the accommodation acceptor, maker, or indorser, has to pay the bill or note, he may recover against the party whom he accommodated the amount paid and interest, but not the cost of defending an action on the instrument.

3. We have next to consider how far a fraud practised on the defendant is an answer to an action on the bill or note.

If the defendant has been defrauded of the bill or note, or it was given for an illegal consideration, he must state this in his plea, and also that the plaintiff gave no consideration for the bill; but there is an important difference between this case and the one above mentioned, namely, that when the defendant has proved the fraud or illegality, the plaintiff is then put upon proof of having, in ignorance of fraud or illegality, given value for the instrument. For there is a presumption that value was given for an accommodation bill, which was intended to raise money, but no such presumption with regard to bills tainted with fraud or illegality; and, besides, it would be manifestly unjust to place the defendant in an action on such bills under the necessity of proving that no consideration passed between the alleged defrauder and the plaintiff in the action; whereas nothing can be more fair than to leave the fact of consideration having passed to be proved by the plaintiff, who should know all about it.

Where a plaintiff is suing upon a bill which he himself has obtained from the defendant by fraud or on an illegal contract, the defendant upon proof of these facts, *and*, in case of fraud, of his having repudiated the contract upon discovery of the fraud, will have made out a valid defence. But where the plaintiff has not *himself* been guilty of the

fraud or a party to the illegality, the proof of these facts on the part of the defendant will only constitute a defence subject to the conditions above stated, namely, if the plaintiff took the bill with notice of the fraud or illegality, *or* gave no consideration.

4. We will now proceed to consider what constitutes consideration, fraud, and illegality, respectively.

The payment of money amounts to a consideration, and, no matter how small the sum is, so that there is an absence of fraud, it will be sufficient to entitle the holder to recover against prior parties.

Any risk run at the request of the person who gives the bill or note, may be a consideration for it. If A has given B his acceptance, this may be a consideration for B's acceptance given to A. Cross acceptances may thus be considerations for each other.

A pre-existing debt due from the transferor to the transferee of a bill or note may be a consideration; at all events, if the bill be payable at a future day; for the previous debt cannot be sued for till the maturity of the bill or note, and this suspension of the right to sue amounts to a consideration, from the person taking the bill or note.

A fluctuating balance may be a consideration when it is in favor of the party to whom a bill or note is given, the consideration increasing or decreasing from time to time with the amount of the balance.

A debt due to another may be a consideration; thus, if A owe money to B, and C give B a bill or note for the amount, this will be a good consideration, and, of course, it will be equally so if C be jointly liable with A for the debt. Also if the bill C gave to B were for a debt which C owed to A, the consideration would be good.

Where a bill is given for the debt of a third party, it is no defence to an action on the bill that such debt was without consideration.

A judgment debt may be a consideration for a note payable at a future day; for the person taking it thereby impliedly undertakes to suspend proceedings on the judgment till the maturity of the instrument.

Where a bankrupt gives a note to a creditor for a former debt, such debt is not a sufficient consideration to support the note; nor is it so in the case of an insolvent discharged under the act, such securities given by him being illegal.

5. Where a consideration *entirely* fails after the bill or note is given, such failure has the same effect as if there had never been any consideration in contemplation at all. For instance, if you give a man a promissory note in consideration of his promising to be your executor, and he dies first, so that he cannot discharge that office, his representative cannot recover against you on the bill. If, however, this bill has been indorsed to a third party for value without notice, he could, of course, recover, on the principles above stated. (See sec. 2.)

But to produce this effect there must be a total failure of that which was contemplated as being the consideration for the bill or note; and a separate and independent wrong, although it virtually renders worthless that which was the consideration for the instrument, will not prevent the person to whom the instrument was given from recovering upon it. For instance, if a bill be given for the price of goods sold and delivered, and the goods are never delivered, there is a defence to an action on the bill; but if, having delivered the goods, the vendor forcibly take them away again, he may recover upon the bill, and the forcible removal will be merely ground for cross-action. In the same way the worthlessness of the goods delivered, or the work done, could not be set up in answer to such a bill, unless it were so great as with other circumstances to amount to *fraud*. But, as in the case mentioned in the last paragraph, the bill is good in the hands of a holder for value without notice.

6. Where the defendant insists on fraud as a defence, he must, on the discovery of the fraud, have entirely repudiated the contract, and retained no benefit under it.

Fraud is where a man is induced to do any act by means of an intentional material misrepresentation, though the party so deceiving him aim at no profit by the transaction. And where a man, in order to influence the conduct of another in business, makes a random assertion (not being a warranty), without knowing whether it be true or false, this is a fraud.

I say "*material*" misrepresentation, for it is not every assertion that a man may make (as for instance, in vending his goods) which, though intentionally false, will constitute fraud, or will amount to a warranty. Also, the false statement or the conduct (for fraud may be by act as well as words, or by both together) must be such as would be naturally calculated to lead a reasonable man astray.

I say "without being a warranty," for a random warranty of a fact which the warrantor did not know to exist, does not amount to fraud; though it does amount to fraud if he knew the warranty to be false.

The means and phases of fraud are so manifold that to attempt much more than a general definition of it would in these pages be impossible. Two instances may nevertheless be mentioned, which, though manifest acts of dishonesty, might not strike an unprofessional person as amounting to legal fraud.

Where a debtor is compounding with his creditors, and without their knowledge gives a bill or note to any creditor, either voluntarily or as an inducement to him to execute the deed of composition, this bill or note is void in the hands of the creditor, as being a *fraud* upon the body of the creditors. So also, if the deed contain a stipulation for the surrender of securities, no creditor holding a bill of the insolvent's will be allowed to keep the proceeds in fraud of the creditors, but must refund the money.

Another instance shall be mentioned from the law of suretyship. When one man proposes to give a bill or note in payment of a certain debt owed by another, and the creditor and the debtor have a secret understanding that the money is to be otherwise appropriated, (as by payment of a prior debt, or by placing part in the hands of the debtor himself,) such a bill will be a fraud on the surety, and void in the hands of the creditor.

7. A plaintiff cannot recover upon a bill given for illegal consideration, if he is obliged to rely on the illegal transaction in making out his case.

Considerations which are illegal, are so either (1) at common law, *i. e.* by the general unwritten law of the land, or (2) by statute.

Considerations illegal at common law may be again divided into (1) such as are privately immoral, and (2) such as contravene public policy.

Under the former head come the considerations for bills, notes, or cheques given for *future* cohabitation, for the rent of apartments knowingly let for the purpose of prostitution, &c.

Under the latter are included the considerations for bills, &c., given upon a contract for the general restraint of trade or business; as if, upon a purchase of the goodwill of a medical practice, or a shoe-maker's shop, it were

bargained that the persons parting with the businesses should thenceforth altogether cease from curing wounds or making shoes respectively. Though there would be no objection to a partial restraint, as to do business only within fifty miles of London, or only with certain classes of customers, as wholesale or retail, &c.

So contracts in restraint of marriage (and it should seem though only in partial restraint) are likewise void; and so are contracts to procure a marriage, or to procure the separation of those already married; also contracts to injure the revenue, to compound a felony or a *public* misdemeanor, or to induce a person to infringe the law.

Contracts with a public enemy, as bills or notes in their favor, are also illegal, and all bills and notes are worthless in their hands; so also contracts for obtaining public offices, and all bills, &c., given in pursuance of such contracts are illegal at common law. These are also many of them illegal by statute, which is the other main division of illegality.

In treating of considerations illegal by statute, it may be convenient first to mention that the offence of usury has ceased to exist, and no contract can any longer be objectionable on that ground, and that gaming contracts, whether written or verbal, are not in general illegal, but are *merely void; i. e.* a man may make a wager or a bet if he pleases upon a lawful game, but having made it, he need not pay. Bills, notes, and cheques, therefore, given in pursuance of such bets or wagers, can only be recovered upon by an innocent indorsee or holder who has taken the bill for value, and in ignorance of the transaction out of which it originated.

Though the winner of stakes at a horse-race may, in general, recover them in an action, yet a former statute which rendered void all bills or notes given for such stakes having been preserved in force by the recent statute on the subject (8 & 9 Vict., c. 109, s. 15), it is the opinion of a learned writer that a *promissory note* given for the amount would be void, except in the hands of an innocent holder for value.

If the loser by play or betting, having given a bill or note, has to pay the innocent holder, the former can recover the amount against the man to whom he lost the bet.

But if one man employs another to bet for him, the employer thereby authorizes his agent to pay losses; the

agent having done so, can recover the money from his principal. Therefore a bill drawn by the agent upon and accepted by the principal for the amount must be paid by him. In this case it will be observed the sum sued for is not money won at play, but a sum paid by the agent to a third party at the principal's express or implied request.

Bills and notes given, whether by a bankrupt or other person, to persuade a creditor to forbear opposing the order of discharge, or to forbear to petition for the rehearing of, or to appeal against the same, are void, except in the hands of a *bonâ fide* holder for value without notice of the consideration for which they were given. The Bankruptcy Act, 1861, sec. 166.

Stock-jobbing contracts were not merely void, like those founded on gaming or wagering but were actually forbidden by law; and therefore differences owing by one man to another, or money lent to pay such differences, did not form a good consideration for a bill or note so as to enable a holder cognizant of the transaction to sue upon them. This illegality, however, having been abolished by the Act 23, Vic. c. 28, we need not now consider this question.

No debt can be recovered for selling spirituous liquors in quantities of a less value than 20*s*., unless delivered at the residence of the purchaser thereof in quantities not less at any one time than a reputed quart; and if any part of the consideration for a bill or note necessarily consists of the price of liquors sold in contravention of this law, the whole note will be void, unless in the hands of an innocent holder for value.

Bills and notes and cheques given to secure the payment of money taken at the doors of an unlicensed theatre, or given by a trader who is a beneficed clergyman, are similarly void in the hands of the parties to the improper transaction.

Where only part of the consideration is fraudulent, the bill or note is bad.

Where an original bill or note is without consideration, or given on an illegal consideration, a renewed bill or note will be open to the same objections, except the amount be reduced by excluding so much of the consideration of the original bill as was illegal.

But if the person who has put his name to the bill or

note for a gaming debt actually pays the whole, or any part of the sum secured to an innocent holder for value, the former may recover back the money so paid from the person who originally took the security for the illegal consideration.

In the cases above mentioned, where the security has been declared by statute to be *void*, it has been provided by the legislature (5 and 6 W. IV, c. 41) that that expression shall be construed as if the Act had said "shall be considered as given for illegal consideration." The effect of this language, as we have seen, is that an innocent holder for value may maintain an action against any party to the bill. But there are other securities rendered *void* by statute, as to which this liberal interpretation does not apply. For instance, the holder of bills and notes given for the sale of an office to a sheriff for ease and favour, could not sue the party who had given the security on such illegal consideration.

The law laid down in this chapter will be partially illustrated by the following table, showing what will constitute a defence, on the grounds treated of, on the part of the acceptor against the drawer and indorsee respectively; but the reader will always remember that when once fraud or illegality are proved by the defendant, the burthen of proving consideration and *bona fides* is shifted on to the shoulders of the plaintiff.

8.

Acceptor sued by Drawer may plead	No consideration (*i. e.* accommodation bill). Fraud. Illegality of consideration. Independent agreement.
Acceptor sued by Indorsee may plead	Accommodation bill, and no consideration from plaintiff, or any of those through whom he has taken the bill. Illegality, with notice. Illegality, and no consideration (as above). Fraud, with notice. Fraud, and no consideration (as above). Independent agreement, with notice.

CHAPTER IV.

OF TRANSFER.

1. Transferring a bill or note, means so passing it to another holder as to enable him to recover at maturity against the parties to it.

A bill or note is only transferable when it contains a direction to pay, (1) to the payee's order, or (2) to bearer. If it contain no such direction, it is of no use to any but the original payee.

The payee may be either the drawer or a third person; and therefore a bill when payable to order may either contain the words "pay to me or my order," or "pay to C or his order." (See chap. i, sec. 1.)

In case of a note, the payee is usually a person other than the maker; and then, if the note be payable to order, the promise will be to "pay to C or his order." But a man *may* make a note payable to himself or order.

If a bill or note be payable to order, it is transferable by indorsement; if to bearer, by delivery; if it be not

payable either to order or to bearer, it is only good in the hands of the payee, and is not negotiable.

Bills may be indorsed or transferred by delivery before as well as after acceptance.

Indorsements are either blank or special.

2. A blank indorsement is made by the payee simply writing his name on the back of the bill or note, and this makes it thenceforth transferable by delivery, though in practice the transferor is often asked to indorse each time that the instrument changes hands.

A special indorsement is by writing a direction to pay to a particular person, and may be made by A. B. thus: "Pay C. D. or his order, A. B." The words "or his order," may be omitted in this case, for their omission will not restrict the negotiability of the instrument.

These indorsements, though not bad if written on the face, are most properly written on the back; and, if more space is wanted, a piece of blank paper, for which no stamp is required, should be pasted on to the end of the bill.

Indorsements may be made by mark.

If two persons, not partners, are payees of a bill or note, both must indorse, unless, of course, one has authority to write the other's name.

An indorsement, like an acceptance, is never complete without delivery. Giving or sending a bill to the transferee, or sending it to his place of business, will, of course, constitute delivery; but there are so many circumstances which constitute *constructive* delivery that the general rule is all that can be given.

3. Every indorser of a bill is in the position of a new drawer, and is liable to every succeeding holder, in case the drawee does not accept, or having accepted, does not pay at maturity, on proper presentment, as to which see chap. viii. An indorser of a note is a surety for the maker, and liable if he does not pay.

As a consequence of the above rule, a person who indorses a bill which is not negotiable, and therefore does not give the indorsee a right to sue the drawer or acceptor, will himself be liable to his indorsee on the bill, because he, the indorser, is a new drawer.

This, however, is not the case as regards notes, to which the principle would not conveniently apply.

4. An agent, or any other person, who indorses and

does not want to become personally liable, should add to his name the words "*sans recours*," or "without recourse to me."

An agreement, written or verbal, not to hold the indorser liable, will prevent his indorsee suing him. But a subsequent indorsee without notice of the agreement may of course do so.

Another way in which the holder of a bill or note indorsed to him *in blank* may transfer it without incurring personal liability, is by writing over the indorser's signature the words, "Pay A. B. or order." This in no way affects the liability of the blank indorser, but simply converts his blank indorsement into a special one in favor of A. B.; and this is done without the transferor's name appearing on the bill.

When a man indorses a bill or note, he warrants that the bill has properly come to his hands, and that all the signatures on it are what they purport to be, and these things he cannot deny when sued on the bill.

A holder may, in suing a drawer, acceptor, maker, or early indorser, omit to prove the intermediate indorsements, which may be struck out, and the case may be treated as though the bill was indorsed to the plaintiff in the first instance. This may be done at the trial.

An indorsement intentionally struck out by the holder discharges the indorser.

5. In default of acceptance, or, after acceptance, in default of payment, an innocent indorsee for value may sue all the parties to the bill, and none of them can set up the defence of fraud, duress, absence of consideration, or, in general, illegality.

The only cases where an innocent indorsee for value has not a good title against all prior parties to the bill (unless there is an agreement to discharge any of them, see above, sec. 4, and chap. xi, sec. 2), are those where the security is rendered *absolutely void* by statute. For example, the sale of an office; the stipulation with a sheriff for ease and favor; securities given to enable a creditor of a bankrupt who has proved his debt to receive more than others; or for a debt, for which the debtor is discharged under the Insolvent Debtors' Acts.

The effect of the law in these cases is, that the party who gives the bill or note for any of these considerations, whether as acceptor, maker, drawer, or indorser, cannot

be successfully sued thereon, but the other parties may be so sued.

It has been already stated, that the gratuitous transferee of an accommodation bill may sue any party but his gratuitous transferor, provided *any one* of the prior parties has given value.

6. If a bill which either requires indorsing, or was intended by the parties to be indorsed, be delivered without indorsement, the transferee has a right of action against the transferor for not indorsing, and perhaps now a mandamus will lie to compel indorsement; at all events, a bill in Chancery may, where it is worth while, be filed for this purpose, and the costs would have to be paid by the person refusing to indorse. The personal representatives of the deceased transferor may also be compelled to indorse.

7. If a man, having indorsed a bill, gets it indorsed again to him, he cannot, as a general rule, sue the intermediate indorsers.

8. If a man to whom a bill or note is indorsed for a particular purpose improperly indorse it to another, the indorsee, if he knew of the breach of trust, cannot sue the real owner of the bill upon it; but, on the contrary, the real owner of the bill may bring his action to have it given up.

This kind of trust may be expressed on the bill itself by the form of indorsement, as "the within must be credited to A. B.;" "Pay A. B. or order for my use;" "Pay A. B. for the account of C. D.;" or "For my use;" or "Pay A. B. only." But we have seen—(sec. 2)—that if the indorsement had been merely "Pay A. B.," this would have been equivalent to "Pay A. B. or order."

The restrictive indorsements above mentioned amount to notice to all who may see the bill, that A. B. is merely a trustee of it, and therefore cannot assign to any one the right to receive on his own account the proceeds of it: so that any one to whom A. B. indorses the bill will be liable to deliver it up, or the money received upon it, to the real owner. Also, if the person who takes the bill from the trustee indorse it again to another indorsee who receives the money on it, and pays it to the former, the latter indorsee will be responsible for any mis-appropriation of the money by such intermediate indorsee; for it is the duty of every holder, having notice of the trust, to pay the proceeds either to the trustee or the real owner.

I have spoken of the trustee's indorsee *receiving* the money, because, though he cannot sue, yet parties liable may pay him, and such payment will discharge them.

9. When a bill or note is originally made, or has become (sec. 2) payable to bearer, and is transferred without indorsement, the transferor is, *as a general rule* not liable.

If the transferor merely made a *gift* of the bill or note he is, of course, not liable, for even if he had indorsed, he could not be sued by the transferee. (See chap. iii, sec. 1, last paragraph.)

If a man pays a bill or note on the purchase of goods without indorsing it, he will not then be liable on the bill (unless he has agreed or promised so to be); for the man who sells the goods, having taken the bill or note without indorsement, must be presumed to have consented to look to the other parties. In fact, the bill has been exchanged for the goods.

So, if such bill or note were given in exchange for other bills or notes, or for money by way of discount, this is a *sale* of the bill, and the transferor is not liable. By not indorsing it, the transferor refuses to pledge himself to the solvency of the parties.

But if such a bill be paid for a pre-existing debt, as for goods bought ten minutes before, the transferor will, in the absence of any understanding on the subject, be liable; for the creditor is entitled to cash, and it is not to be inferred that he meant to let the debtor off by merely taking notes or bills.

And there are other circumstances from which a jury may infer that the implied contract was that the transferor should be responsible, without indorsement, if the bill or note were dishonored; as, for instance, if cash were given for the instrument by a friend as a favor, and not by way of sale or discount.

10. A person transferring by delivery lways impliedly warrants that the bill is not forged or fictitious, and if there be a single fictitious signature there will be a breach of warranty, and any cash given for the bill must be returned; or if any other consideration be given, an action may be brought for the breach of warranty.

A person who has received a bill by delivery does not, on so transferring again, make any implied warranty that the signatures are genuine; nevertheless, if he *knows* that they are not so, he will be answerable for the fraud.

11. Bills or notes payable to bearer circulate as money. The *bona fide* possessor of them is their true owner. Therefore, a cheque, bill, or note, payable to bearer passes to any person honestly taking it for value, though the person transferring had no right to transfer.

I say *honestly* taking it; for mere negligence, however gross, will not of itself invalidate his title. Gross negligence, however, in a man at all acquainted with business, may be sufficient evidence of dishonesty and bad faith.

And these rules apply to the pledging of bills and notes, as well as to their absolute transfer; the honest pawnee obtains a property in the bills or notes, and cannot be compelled, as in the case of goods improperly pledged, to return the bill to their rightful owner.

Exchequer bills, before the blank is filled up, and India bonds, have also, like bills and notes payable to bearer, the qualities of money.

12. An indorsement (which, as we have seen (sec. 1), may be made before acceptance) may also be made on a blank piece of paper, on which no note or bill has been made or drawn; and the effect of this is to make the drawer liable upon any bill or note afterwards drawn or made on the same paper to the extent of the stamp. The indorser cannot, when sued, set up as a defence that the note or bill was not made or drawn at the time when he signed his name at the back.

13. When a transferee takes by indorsement an unaccepted bill, with notice that the acceptance has been *refused*, he takes it solely on the credit of the indorser, so that, if the indorser cannot sue the drawer, neither can the indorsee. As, for instance, if the drawer, owing money to A, were to draw upon a third party a bill payable "to A or order," and were afterwards to pay the money to A, and caution the drawee not to accept, and A were then, instead of returning the draft, to present it to the drawee for acceptance, and upon his refusal were to indorse the draft to B with notice of such refusal, and suppose then B were to sue the drawer upon his dishonored draft, the drawer might successfully defend the action on the ground that A, who indorsed the draft, could not have recovered on it, and that the plaintiff took it with notice of non-acceptance.

But, if the transferee have no such notice, he may sue the other parties to the bill, although his transferor could not.

14. The same principle is applied in the case of a bill being transferred overdue; for such a bill is said to "come disgraced to the indorsee," who takes it at his peril and "subject to all the equities with which it may be encumbered."

For instance, suppose a bill, drawn on a person for a gaming debt and accepted, were indorsed by the drawer, when *overdue* to an innocent indorsee for value, the latter could not recover against the acceptor; for the indorsee took the bill under circumstances of suspicion, and solely on the credit of his indorser.

But, if the same bill had been indorsed in the same way before it was due, the indorsee could have recovered against the acceptor, as well as against the person from whom he took the bill.

The above is a case where the person who indorsed the bill overdue could not himself recover upon it, but if the indorser be able to sue upon the bill, so can his indorsee. As if for instance, in the above case, the drawer had indorsed the bill to an innocent indorsee for value *before* it was due, and then the indorsee had indorsed to another *after* due, the latter could recover.

But an indorsee of a bill or note overdue takes subject only to the equities attaching upon the instrument itself, and he is not affected by those which are only collateral to it, as, for instance, a set-off due from the payee to the maker of a note.

15. A note payable on demand is not to be considered overdue unless there be some evidence of payment having been refused, for such notes are often intended to be a continuing security, and interest is often paid on them for many years.

16. When once paid at maturity by the *acceptor* or *maker*, bills and notes are extinguished, and cannot again be negotiated; but if paid *before* maturity, they will still be good in the hands of a *bona fide* indorsee for value, who has taken them without notice of their having been paid. They should therefore, on payment by the acceptor or maker, be given up to them.

An accommodation bill paid by the drawer at maturity cannot be re-issued by him.

But, with this exception, until a bill is paid by the acceptor, and a note by the maker, they remain negotiable. Therefore, the drawer or indorser who has taken up a dis-

honored bill at maturity, can, instead of himself suing the acceptor, indorse the bill to another person, who will have that right.

When the acceptor or maker has made a partial payment at maturity, the balance only can be recovered by the holder.

The holder of a note, on which part of the consideration *has been paid*, can only indorse for the *whole* of the balance.

When a bill is transferred for part only of the sum due upon it, if this fact appears on the bill itself, the indorsee must sue in the name of the person who transferred to him; but if the indorsement do not mention the fact, and there be no memorandum of it on the bill, the indorsee can sue and recover in his own name the whole amount of the bill, and will be a trustee of the surplus for his transferor.

After taking a release for the bill, or after bringing an action on the bill, the holder cannot indorse so as to confer a title on any one who knows of the release or the action, as the case may be.

17. If the bill or note be under £5, it must only have twenty-one days to run. No indorsement must be made after the bill or note is due; each indorsement must be dated; and the date must be at or not before the time of making, must specify the name and place of abode of the indorsee, and be attested by one subscribing witness at least.

CHAPTER V.

HOW FAR A BILL OR NOTE IS CONSIDERED AS PAYMENT.

1. *Rights of Creditor who has taken a Bill or Note for a Debt.*
2. *Rights of Parties taking Instruments payable to Bearer without Indorsement.*—Sale *of Bill or Note.*
3. *Creditor of a Firm taking separate Bill or Note of one Partner.*
4. *Loss of Bill received for a Debt.*
5. *Lien ceases on taking a Bill.*
6. *Miscellaneous matters connected with payment.*

1. It has already been stated that if a creditor take a

bill or note payable at a future day from his debtor, or from a third party for the debtor, the debt is not paid, but no action can be brought for it till the bill or note is mature and dishonored.

If the bill or note is paid, or if it is lost or discharged by the negligence of the creditor, the debt is satisfied; but see sec. 4. If it is in the hands of the creditor overdue and dishonored, he has his remedy, either on the bill or the original debt; and though he may have parted with the bill, the creditor will, in case it be dishonored, still have his remedy for the original debt.

I have spoken of the debt being *discharged* by the negligence of the creditor who has taken the bill; this refers to the case where the debtor, giving the bill for the debt, is drawer or indorser, and must have punctual notice of dishonor (see chapter xiii). If the debtor were *acceptor* or *maker* of a bill or note, he cannot be discharged by the creditor's negligence.

The law will be the same if the debtor request the creditor to take a bill or note of a third person, and the bill or note is dishonored; the creditor may sue his original debtor. The same where, not having the option of taking cash, he takes a bill of the debtor's agent.

2. We have seen (chap. iv, sec. 9) that where a bill or note made or become payable to bearer, is given, though without indorsement, for a pre-existing debt or past consideration to a creditor who is entitled to money, the creditor may still sue his debtor if the bill is dishonored. But if the payment of such a bill be made, not for a past debt, but for an immediate consideration, such as the sale of goods then and there, the seller is supposed to consent to take the bill in exchange for the goods, and as he has not insisted on indorsement, he cannot sue the buyer if the bill turns out worthless, for the bill has been simply exchanged, with all its faults, for the goods. As to the case of some of the signatures being forged, &c., see chap. iv, sec. 10.

But a bill may in the same way, by agreement between the parties, be taken, not only upon such a bargain as that just mentioned, but for a pre-existing debt. In fact, a debtor may, by express agreement with his creditor, give him a bill payable to bearer without indorsing it, so as to be at once, and whether eventually paid or not, a satisfaction and payment of the debt.

3. But though, in the absence of an agreement, a creditor does not receive payment of a debt by simply taking the bill or note of his debtor, yet if his debtor be a firm, and he takes the separate note of one of the partners, he will be taken to have discharged the firm, and to rely solely upon the single partner, unless, of course, there were an express agreement that the others should remain liable. This is because, in the case of the bankruptcy of the *firm*, or the death of the partner, the creditor might be in a far better position than if he had the whole firm as his debtors, and this advantage amounts to a consideration.

4. If the bill or note be lost, the debt is discharged; but by a recent Act the owner may sue on the instrument, and recover the money, on giving an indemnity to the satisfaction of the Court.

5. Where a man has a lien on goods, and he takes a bill or note for the debt, the lien on the goods ceases, and he must give them up to the owner, unless there is an express agreement for him to keep them.

6. When a renewal bill or note is dishonored, the right to sue on the old bill or note revives.

Where a man is bound by deed to pay money, the taking a bill or note from him does not extinguish or suspend the right to sue him upon the deed.

If he owe money for rent, and give a promissory note for it, the landlord may still distrain at any time till the note is paid.

If on borrowing money a man covenant to pay it by deed, as by giving a mortgage, and give a bill or note at the same time by way of collateral security, the creditor may sue either on the deed or bill; but where it is not so intended, the right to sue on the bill is merged or swallowed up in the right to sue on the deed.

CHAPTER VI.

OF ACCEPTANCE.

1. *Meaning and nature of.*
2. *General Acceptance.*
3. *Special Acceptance.*
4. *Qualified Acceptances.*

5. *When Bill may be accepted—date.*
6. *Delivery must accompany Acceptance.*
7. *What may be treated as a refusal to accept.*
8. *Acceptance for honor of Drawer.*
9. *What is admitted by Acceptance.*
10. *How Acceptor may be discharged.*
11. *Who must accept?*

1. Acceptance only applies to bills.

When the drawee irrevocably assents to pay the bill in money when due, he is said to *accept*.

Acceptance in this country of bills, whether inland or foreign, must be by writing on the bill, signed by the acceptor, or some person duly authorized by him in his name.

Acceptances are of three kinds, general, special, and qualified.

2. A general acceptance may be by writing, "Accepted," or "Accepted, payable at Drummond's bank," or by similar words, followed by the acceptor's signature. As to the presentation of a bill so payable, see chap. viii, sec. 4.

3. A special acceptance is where the word "Accepted," is followed by words which do not merely *indicate*, as in the last instance given, the place where the bill is to be payable, but *restrict* its payment to that particular place and no other; as, for instance, "Accepted, payable at Drummond's bank, and there only," or similar words.

4. A *qualified* acceptance is where a man accepts a bill for only a portion of the amount for which it is drawn; and this may be done by writing "Accepted for £100 only." If a bill were drawn payable at three months, and were accepted "payable at six months," or "on condition of its being renewed for three months," or with other words to the like effect appearing on the face of the bill, this would be a partial acceptance.

There is also a kind of acceptance called *conditional*, by which the bill is made payable only on the happening of a certain event; but now that acceptances must be in writing, it is necessary that the condition (if any) should appear on the face of the acceptance.

5. A bill may be accepted when the time at which it is made payable has elapsed, and then the acceptor will be liable immediately. If the bill be drawn payable

so many days "after sight," the *date* of the acceptance should be appended, and the time will count from the day of acceptance.

6. None of these acceptances will be complete unless accompanied by a delivery of the bill to the person presenting it for acceptance. If the drawee have written an acceptance across the bill, he can cancel it at any time while the bill is in his possession, or at all events till he has intimated his intention to accept.

7. If the holder be entitled to a general acceptance, and the drawee refuse, and make a special or qualified acceptance, the holder may treat the bill as dishonored by non-acceptance, may have it noted, and advise the prior parties, if any, of a refusal to accept.

If the drawee be discovered to be incompetent to contract, as by being an infant or married woman, the holder may treat the bill as dishonored.

8. Where the bill is in the hands of a payee or indorsee, and the drawee cannot be found, a stranger may, by going before a notary, accept the bill, after it has been protested, for the honor of the drawer or indorser. He then writes across the bill, "Accepted, S. P." (or supra protest), "for the honor of A. B." or these latter words may be omitted. He then signs his name.

9. The acceptor is bound to know the handwriting of the drawer; therefore by acceptance the signature and capacity of the drawer are admitted, and the acceptor cannot afterwards shew that the drawer's signature was forged, or that he was incapable of contracting.

The acceptor also admits the capacity of the payee to receive, and consequently to indorse, and cannot afterwards shew his inability to do so, or that she is a married woman, &c.

But if the bill when accepted is *already indorsed* in the name of an existing person, and the name turns out to have been forged, the acceptor may shew this fact when sued on the acceptance by the indorsee, and it will then be a question whether the acceptor meant to give currency to the bill in spite of the forgery, in which case he will be liable upon it.

Where the drawing is by procuration, the acceptor only admits the authority to draw, but not that to indorse.

When the bill is drawn in a fictitious name, the acceptor undertakes to pay to an indorsement by the same hand.

If the acceptor's name be written by some other person, and the acceptor afterwards gives currency to the bill by admitting it to be his own, or treating it as such, or ratifying the act, he is liable.

10. An acceptor may be discharged by a holder *expressly* renouncing his claim, and for the *whole* amount, and this may be before or after the bill is due. The renunciation may be verbal, or in writing, or by cancelling the acceptance. But if it be verbal, or by writing separate from the bill, and before due, it will not affect the right of any person to whom the holder may transfer for value and without notice. (See chap. xi.)

If a third person cancel the acceptance, the acceptor will only be discharged if it was done by the consent of the holder.

The holder may of course lose his claim on the acceptor by taking a new security in the place of the old one;—so easy is this that, if there are two joint acceptors, the separate note of one of them may be a renunciation of the holder's rights against the other.

No one can discharge the acceptor but the holder, or some one authorized by him.

11. The question, who may accept? depends upon the question upon whom the bill is drawn? If upon a single individual, who refuses to accept, no one else can accept, unless, as before mentioned (sec. 8), for the honor of the drawer; if upon two or more persons in partnership, any one partner can (see chap. ii) bind the firm; but if upon several persons not partners, they must *every* one accept, or the bill may be treated as dishonored; but those who accept will be bound.

CHAPTER VII.

OF PRESENTMENT FOR ACCEPTANCE.

1. *Always desirable, sometimes necessary—notice of refusal.*
2. *Presentment, how to be made.*
3. *When excused.*

1. Every bill should be presented by the holder for acceptance without delay, for if the bill be accepted, he has the acceptor's security; and if the acceptance be refused, then the prior parties become *immediately* liable.

For this purpose, in the event of refusal, notice of non-acceptance, *i. e.* of dishonor, should at once be given.

Though presentment for acceptance is always desirable, and though upon non-acceptance prior parties are *always* chargeable, yet it is only in case of bills payable *at sight*, or a certain period *after sight*, that such presentment is absolutely *necessary*. But in all bills the holder may suffer for neglecting to present if he has been cautioned by the drawer to do so.

2. To procure the drawee's acceptance, the bill should be taken within a reasonable time, at business hours, to the place of business of the drawee, or his residence as described on the bill, or his other known place of abode, or such other place as he may have removed to in the neighbourhood, and it must there be presented to the drawee, or his authorized agent.

If the drawee have absconded, such presentment is excused. It is likewise excused by illness, or any other accident not attributable to negligence in the holder.

The drawee may keep the bill twenty-four hours for deliberation, but if he keeps it longer, prior parties should have notice, in order to make them chargeable.

If the drawee be dead, the bill should be presented to his personal representative.

3. Presentment of bills payable at or after sight is excused by their being in circulation.

CHAPTER VIII.

OF PRESENTMENT FOR PAYMENT OF BILLS AND NOTES.

1. *Necessity of.*
2. *How to be made.*
3. *Presentment of Bills payable* at *sight, how excused.*
4. *Other circumstances which excuse Presentment.*
5. *Where to be made.*
6. *Of days of grace.*
7. *Within what time Bills and Notes should be presented.*
8. *Rule does not generally apply to* Note *payable on demand.*
9. *Drawee's Bankruptcy, &c., no excuse.*

1. It is not in general necessary, in order to charge the acceptor or maker of a bill or note, that it should be

presented to him for payment when due or at any time after. An action may at once be brought.

[But a bill or note, payable at or after sight, must be presented in order to charge the acceptor or maker. And a bill accepted payable at a particular place *and there only*, and a note made *in the body of it* payable at a particular place, must be presented at that place in order to charge the acceptor or maker. (See ss. 2 and 4.)]

The consequence of a bill or note being not duly presented for payment to the acceptor or maker is, that all the antecedent parties will be discharged from their liability, whether on the instrument or on the consideration for which it was given.

The rules relating to presentment for payment will therefore require attention.

2. Presentment for payment (unlike presentment for acceptance) need not be personal, for it is enough if the bill or note be shewn to a wife, servant, or clerk of the acceptor, at his residence or place of business. It is the duty of the acceptor to provide for payment if he be absent himself.

When a bill is payable *at* sight, presentment for payment and acceptance are identical, at all events as to time, and therefore presentment for payment will, as well as that for acceptance, be excused by putting such bills in circulation. (See chap. vii, sect. 3.)

The acceptor of a bill is always liable upon it after due, whether presented or not; but it is absolutely essential, in order to make *the other* parties liable upon the bill, that it should be presented to the acceptor for payment *on the day* when it falls due. (But see sect. 5.)

3. The case of a bill payable at sight, or at a certain time after sight, and kept in circulation, differs, as we have seen, from the case of ordinary bills; for, however long a bill payable at or after sight may have circulated, the holder in whose hands it ultimately finds itself may present, and in default of payment by the acceptor, may recover against the other parties.

4. There are a few other circumstances which are said to *excuse* the holder from presenting for payment, *i. e.* circumstances under which he may still sue the prior parties, though the bill may not have been presented for payment at maturity.

The principal of these are, where the drawee absconds,

(though not where he merely changes his residence;) where the bill is actually lost; and where it has been seized by the Crown under a form of execution called an extent.

5. As to the *place* where the bill may be presented for payment, this depends on the form of the acceptance. (See chap. vi.) With reference to place, there are three modes of acceptance: (1) the general acceptance, by writing the word "Accepted," and signing the acceptor's name; (2) by adding after the word "Accepted," and before signature, the words "payable at A. B. and Co.'s;" (3) by adding to the last-named form the words "and there only," or equivalent words. (See chap. vi.)

The effect of the first is that the bill must be presented to the acceptor at his residence or place of business, or if he have neither, then to him personally.

In the second case, the bill may be presented either at the bank named, or at the acceptor's residence or place of business. But in order to change the *drawer* or *indorsers* of a bill, or the indorsers of a note, it must, even in this case, have been presented at the place specified.

And in the last case, the bill can only be effectually presented at the bank mentioned.

Where no day is named on which a bill or note falls due, it is payable on demand, the same as if so expressed.

A bill, though drawn in the body of it payable at a particular place, will be payable anywhere unless expressed to be payable *there only;* but a *note* made, *in the body of it,* payable at a particular place, though *not* expressed to be payable there only, must be presented at the particular place.

6. With respect to bills or notes payable at a specific time, as, for instance, six months after date, and also in case of a bill payable after sight, *three days are added* to the time when the bill or note nominally becomes payable, so that if a bill be on its face payable on the 3d of the month, it will not really be payable till the 6th, and that is the day on which it must be presented.

These three days are called "days of grace," and are different in different countries, being dependent on the custom of merchants, incorporated into the law of the land.

A presentment for payment before the expiration of these days is premature.

When the last day of grace falls on a Sunday, Christ-

mas Day, Good Friday, or public fast or thanksgiving day, the bill must be presented on the day *before* such day, and if not then paid will be dishonored.

A bill at one month, dated the 31st of January, would nominally become due the 28th of February, and, with days of grace, would be payable on the 3rd of March.

7. Bills and notes must be presented within *reasonable hours*, *i.e.*, before seven or eight in the evening; and if payable at a bank, during banking hours.

If the instrument be payable on demand, and has to be sent by post to be presented to the acceptor or maker, the person sending it should do so the day after he has received it, and the person to whom it is sent by post should present it before the end of the day following that on which he has received it.

8. This last rule does not apply to an ordinary promissory note payable on demand, especially if made payable with interest; for such instruments are often meant to be a continuing security for money, and parties often go on paying interest upon them for many years. But if the indorser of such a note be sued by an indorsee, the defendant may set up the defence that the note was not presented for payment within a reasonable time, and he may then shew to the Court any contract or special circumstances from which it may be inferred that the bill in question should have been presented earlier.

9. But presentment for payment will not be excused by the bankruptcy or insolvency of the drawee of a bill or maker of a note, for payment may be made by his friends; nor will a mere threat by the drawee of a bill not to pay, though made in the presence of the drawer, be any excuse for not presenting the bill at maturity.

CHAPTER IX.

PAYMENT.

1. *Consequences of Refusal.*
2. *When Payment may be made.*
3. *To whom the Acceptor or Maker must pay.*
4. *Exception in favor of Bills or Notes payable to Bearer.*
5. *By whom payment must be made, so as to put an end to the Bill or Note.*

6. *Bill or Note may be paid any number of times before maturity.*
7. *Bill or Note payable on demand.*
8. *Payment may be by Money, or in other ways.*
9. *Of proof of Payment.*

1. The holder of a bill or note may, if payment be refused by the acceptor or maker on presentment, immediately give notice of dishonor to all or any of the earlier parties to the instrument, as to which, see chapter xiii, on "Notice of Dishonor."

2. But the maker or acceptor has the whole of the day of the presentment in which to pay, and if he pay on that day, though after a refusal, the payment is good, and the notice of dishonor, if given, falls to the ground.

3. No payment will discharge the maker or acceptor, unless it be made to the true holder. For instance, if the drawer have indorsed an accepted bill to his bankers, who give him credit for it, and the acceptor at maturity pay to the drawer, the acceptor is liable to be sued by the bankers, and may have to pay over again.

Therefore, to have the bill given up on payment is a necessary precaution, though not always a complete one.

If the bill or note be not payable to bearer, that is, if it has required indorsement to make it the property of the holder, the acceptor or maker should be satisfied, on paying the money on presentment, that the indorsement is genuine; for if it be forged or made by an unauthorized person, the payment will be no discharge, and the money may have to be paid over again.

4. To the rule that no payment, save to the true holder, will operate on a discharge, there is an exception in favor of bills or notes made or become payable to bearer. Not only does a person who has taken such instruments *bonâ fide* and for value from one who has found or stolen them, acquire a title to them so as to be able to recover on them, but a payment made *bonâ fide* and *without negligence*, even to the finder or the thief, will discharge the party paying, though the finder or the thief could not recover on the instrument in a Court of Law.

5. If a bill be paid by the drawer, the holder may still at the drawer's request sue the acceptor on it, and thus re-imburse the drawer, or the drawer may himself sue the acceptor.

This rule arises from the acceptor being the person primarily liable, and therefore does not apply to accommodation bills, in which, as we have seen, the drawer is usually the person primarily liable. Payment by the drawer, therefore, of such bills is a complete discharge of the bill.

A bill or note is always discharged when paid by the acceptor or maker, after which it cannot be circulated again, nor can any action be brought upon it.

But, a bill may be paid at maturity by the drawer or indorser, in which case the person paying has his remedy intact upon the bill. This is called *retiring* a bill or note, a word sometimes improperly applied to a payment by the acceptor.

It may sometimes be a question whether an indorser paying a bill does so as the agent of the acceptor, or for the purpose of retiring the bill.

A payment by a stranger, as for instance, a friend of the acceptor or maker, need not necessarily be a payment by the acceptor, so as to put an end to the bill.

6. Though a bill is discharged when paid at maturity by the acceptor or maker, yet it may be paid any number of times before it is due, and may be circulated anew between each payment. For example, the acceptor or maker of a bill or note, made or become payable to bearer, and not yet due, may pay the present holder, and straightway for a consideration give the instrument to another. Or if a bill payable to bearer be paid by the acceptor before it is due, and, instead of being destroyed, get lost, and the person finding it give it to a *bonâ fide* holder for value, such last-mentioned holder may recover on it at maturity.

7. A bill or note payable on demand can never be prematurely paid, and, therefore, a payment on demand of such a bill will be a defence even against an indorsee for value without notice of the payment, for such bills are *prevented by statute* from circulating again. Extreme caution should on this account be used in taking such bills, which may be utterly valueless.

8. Payment may be made in money or by means of any other consideration. Payment of a smaller sum can never be satisfaction of a larger sum. (But see chap. xi, sect. 1.) If it be made by a cheque, as is often the case, and the bill be given up to the acceptor, and the cheque be dishonored, the drawer and indorsers will be dis-

charged; for they, when *they* pay, have a right to have the bill given up to *them*, and, if the acceptor has the bill, this is impossible.

It has been held, nevertheless, that an agent, unless ordered to the contrary, is justified in giving up the bill on receipt of a cheque.

The same result would probably be considered to arise if the payment were made in bank notes, and the banker were to fail.

9. When payment is made by the acceptor, it is usual to give a receipt on the back of the bill, for which no further stamp is required. Such a receipt, being seldom given upon payment by other parties, is *prima facie* evidence that the bill was paid by the acceptor.

When a man is sued upon a bill or note, and he produces a cheque for the amount of the bill or note drawn by him, and which has passed through his banker's hands, and bears the plaintiff's name at the back, this raises a presumption of payment, unless there have been so many dealings between the parties that it is impossible to say to which the cheque in question relates.

If the receipt be given on a separate piece of paper, it will not be admissible in evidence without a stamp; but though it cannot be seen by the jury in a civil proceeding, yet it may be shewn to the witness to refresh his memory, and if he persists in denying the receipt, the document will be admissible against him in a criminal proceeding, as, for instance, an indictment for perjury.

After a lapse of twenty years, a promissory note payable on demand is presumed to have been paid.

CHAPTER X.

APPROPRIATION OF PAYMENTS.

A few rules are necessary on this subject with reference to cases where there may be current accounts, or several debts owing by one party to another.

1. The payment of money is appropriated (*i.e.* applied to a particular debt), at the choice of the party paying.

2. If no such choice were made, then the creditor may choose to which debt the money shall be applied.

3. Where there is an account current and the party

paying is silent, it is presumed that he intends the payment to apply to the earlier items.

Where the debts are *distinct*, the creditor may, in the absence of any appropriation by the debtor, appropriate the payment to any debt he pleases, but he will be bound by any communication he may have made to the debtor of the way the payment is appropriated.

The same rules apply to a payment by a third party. But where a third party pays money to the creditor for the debtor, the creditor cannot appropriate the payment to a particular debt without the consent of the person paying.

From these rules, it will be understood that if A be liable to B upon three bills of £100 each, and pay him £100 without saying for which bill the payment is meant, B may wait to appropriate the payment till such time as he sues upon the other bills. It might be a matter of great advantage to him to be able to exercise this power, because he has all the intervening time to see which of the bills will be satisfied by other parties.

CHAPTER XI.

SATISFACTION, EXTINGUISHMENT, AND SUSPENSION.

1. *Accord, and satisfaction of a debt due on a Bill or Note.*
2. *Release before and after maturity by word of mouth, writing, and deed.*
3. *Considerations which may by consent (i. e.* "accord"), *amount to satisfaction of a Bill or Note.*
4. *Difference between taking a Bill or Note in* satisfaction *and* discharge *of a debt, and taking it in* payment *of a debt.*
5. *Bill indorsed to one of several joint acceptors.*
6. *Discharge of acceptor is discharge of other parties.*
7. *Miscellaneous matters connected with the subject.*

1. There are other circumstances under which a bill or note may be as much satisfied, and the remedies on it extinguished, as by means of payment strictly so called.

Although, as we have seen (chap. ix, sec. 8), part payment by the party owing a larger sum can never satisfy the whole debt, yet such part payment, if accompanied by an act done at the request of the creditor, will amount to such a

consideration, as is capable of effecting this object. If, for example, it be agreed between the acceptor and the holder of a dishonored bill for £100, that the acceptor shall pay 6d. in satisfaction of the debt, this consideration will be insufficient; whereas, if to the payment of 6d. it be agreed to add the delivery of a loaf of bread, the bill will be thereby discharged; and this may be done though an action has been brought. This is called "*accord and satisfaction.*"

2. *Before* maturity, a bill or note may be discharged either by deed (*i. e.* writing under seal), or by other writing, or by word of mouth; in either case, *without any consideration.* If, however, the bill or note should not be given up, or a memorandum made on it, the holder may frustrate what he has consented to do, by transferring the bill or note to a *bona fide* holder for value, without notice.

After maturity a release (strictly so called) can only be effected by deed, for which, however, there need be no consideration, and this binds the releasor's transferees, who, though they have no notice of the release, yet cannot recover on the bill; for the bill being overdue, should put them on their enquiry. (But see sec. 1.)

3. A bill taken from one of two partners in his own name, may be a satisfaction for a joint debt.

Foregoing a defence to a suit may be a satisfaction of a debt.

Taking a *bill* or *note* for a smaller sum may be a satisfaction for a larger sum, for the negotiable quality of the instrument confers an advantage, as does also the more effectual remedy afforded by law upon such instruments.

4. If a creditor takes the bill or note of a third person in *satisfaction and discharge* of a debt owing by another, the debt will then be extinguished, and it will not revive on the dishonor of the security; but it is always a question for a jury, whether the instrument be so taken, or merely by way of further security, or on account.

If a bill or note be given by way of payment of a debt, no action can be brought for the debt till the maturity of the bill or note; also, if another bill or note be given by way of renewal of a former bill or note, no action can be brought till the maturity of the second bill or note.

5. A bill indorsed in blank to one of several acceptors, and in his hands when due, can neither be sued on by the holder, nor transferred by him so as to confer a right against any of the acceptors.

6. Whenever the acceptor, or maker of a bill or note, is discharged, all the other parties are discharged, for the surety is always discharged by the discharge of the principal.

A judgment recovered against one acceptor of a bill or joint maker of a note, is an answer to an action against the others; otherwise of a judgment against a joint and several maker of a note. (Acceptances are always joint.)

7. Issuing execution against either the body or goods of one party does not discharge the others; but discharging a party whose body has been taken in execution, will operate as a discharge to all those parties to the instrument who stand as his sureties, a relationship which will presently be explained. (See chap. xii, sec. 3.)

Waiving the right of taking his goods in execution will not have the same effect.

A bill or note is discharged by taking a co-extensive security by deed, but only as regards the party executing such deed; unless the deed were taken from the acceptor or maker; for in that case, of course, all the parties are discharged.

But the security must be strictly co-extensive; for instance, a note will not be discharged by taking the bond of one of two joint *and several* makers for the money. This is a difficult subject, on which advice will always be sought.

CHAPTER XII.

PRINCIPAL AND SURETY.

1. *General meaning of the words*
2. *Suretyship may arise on the Bill or Note, or by independent contract.*
3. *Of the different relations of principal and surety arising among the parties to a Bill or Note.—Discharge of principal is discharge of surety, &c.*
4. *What indulgence the holder may grant to acceptor or maker, without discharging drawer and indorsers.*
5. *Of suretyships by independent contract, or* guarantees, *and the rights under them.*
6. *Sureties—when discharged by taking a* renewal *Bill.*
7. *Judgment.—Taking composition from acceptor or maker.*
8. *Under what circumstances the sureties will remain liable.*

9. *Where the principal and surety jointly sign a Bill or Note.*
10. *Surety who has paid may sue his principal.—Contribution among co-sureties.—Insolvent surety.*
11. *Position of acceptor for honor.*

1. Without an elaborate definition of the word "Principal," it will be understood that the principal debtor is the man who is primarily liable as the person himself owing the money; and the surety is, in relation to the principal, one who in some way or other may be obliged to pay the money in default of the principal; *i. e.* the surety is the person secondarily liable.

2. This relationship may attach to a person either by his becoming party to a bill or note, or by an independent contract.

3. First, as to the relation of principal and surety arising upon the instrument itself.

The acceptor of a bill and the maker of a note are the principals, being the persons primarily liable upon the instrument.

All the other parties are sureties to the principals; but each is a principal to those who follow him.

Looking at the matter from the holder's point of view, the acceptor is, at maturity, his principal debtor, and the drawer and indorsers are all the acceptor's sureties; the indorsers are again sureties for the drawer, and the third indorser is surety for the second indorser, (the *first* indorser being the drawer.)

When the acceptor of a bill or maker of a note is discharged, all the other parties are discharged, for the surety is always discharged by the discharge of the principal. (See last chap. s. 6.)

A discharge to prior parties is a discharge to subsequent parties, but a discharge to subsequent parties is not a discharge to prior parties.

This is because the subsequent parties may, if compelled to pay the bill or note, sue the prior parties, but the latter cannot, on such payment, sue the subsequent parties.

But, if the acceptor be bankrupt, the holder may prove under the commission, the discharge in this case being by act of law, and not of the holder himself; and he may for the same reason sue the drawer and indorsers. The fact of the bill being an accommodation bill, even if the holder knew it, would make no difference.

In the case of a note, the relations are the same, the indorsers being sureties for the maker. It makes no difference if the note be given gratuitously. But this is, of course, subject to the rule that no man can sue on a bill or note the person from whom he gratuitously received it.

4. The holder may be as negligent as he pleases in suing, prosecuting his suit, obtaining judgment, and issuing execution against the person primarily liable, and he may still, until the suit is barred by the Statute of Limitations, sue the persons liable as sureties.

But, if the holder once, by a binding contract, part with or suspend, for however short a time, the *right* of suing to judgment, or of obtaining the fruits of a judgment against the person primarily liable, those liable as sureties are discharged, unless the loss or suspension of the rights against the principal took place with their sanction; for the surety always has a right to pay off the debt and recover.

But, to effect the discharge of the sureties, the suspension of the remedy against the principal must be by an agreement, which, whether written or verbal, binds the creditor; a mere promise of forbearance without consideration will not have this result.

A bargain may, however, be made not to sue for a certain time, with a proviso that if the money be paid, the creditor may have a judgment as soon as he might in the regular course. This will leave untouched the liability of the sureties.

5. The same rules apply equally to suretyships contracted by agreement, independent of the bill. These agreements, usually called guarantees, can only be made in writing, and cannot be made binding, unless they are either made by deed, or there is some consideration.

6. The taking a new bill or note from the person primarily liable, payable at a future day, discharges the sureties, for it interferes with the right of the surety *at any time* to pay off the debt, and recover against his principal.

This is the same whether they are sureties on the bill, or by independent contract.

If, however, the second bill be taken only by way of collateral security, *i. e.* if the right to sue on the first be not thereby suspended, the sureties, whether on the bill itself, or by independent contract, are not discharged.

Taking a new bill from, or suspending the remedy

against a subsequent party, never discharges a prior party.

7. The holder of a bill may sue all the parties at the same time, or one after the other, and a judgment against any will not be a satisfaction as to the rest.

If the holder takes a composition from the acceptor or maker, the other parties are discharged. Part payment, of course, has no such effect.

It is presumed, also, that the drawer and indorsers of an unaccepted draft will be discharged if the holder gives the drawee a longer time to accept than according to the tenor of the draft.

8. But if it be agreed between the holder and the principal debtor that the sureties shall remain liable, they will then remain so; for it is presumed the sureties can then at any time pay off the debt, and recover against the principal debtor, and it is on the continuance of this right that the continuance of the surety's liability depends.

But, this is subject to the rule that if one person, *jointly* liable, be discharged, the other joint contractors are discharged also. [As to the distinction between *joint* and *joint and several* liability, see chap. xix, sec. 1.]

[Throughout this chapter, the word "principal debtor" may be used as synonymous with "person primarily liable;" the holder will then be, in general, the creditor, and the drawer and indorsers (or, in case of a note, the indorsers) the sureties.]

Again, if the surety consent to the principal debtor having time to pay, the former will not be discharged; so also if, *after* the time has been bargained for between the principal debtor and creditor, if the surety ratify the course adopted, he will not be discharged, but will have *waived* his right.

Both the prior consent and the subsequent ratification may be verbal as well as in writing. It is very easy to see what will constitute a *consent;* but a surety should be very careful that what he says does not amount to a *ratification.* If the surety says, "I know I am liable," or, "I will pay, if he does not," this will constitute a ratification; but merely saying, "It is the best thing that can be done," has been held not to do so.

9. It sometimes happens that a person, in order to obtain credit, procures another to join him in making a *joint* note, or, *jointly* accepting a bill (see chap. xix, sec. 1). In this case, the relation of principal and surety is only by

arrangement with one another, and differs from that which appears on the face of the instrument, or is created by an independent contract with the creditor; for as both are *jointly* liable, the discharge of *either* operates as the discharge of both. Whereas, in ordinary cases, the surety may be discharged, and the principal held liable.

10. When a surety has paid an overdue bill, he has his remedy against his principal; nay, if he pay by instalments, he may bring a separate action for each instalment.

Where there are several sureties for the whole amount, each is liable to the creditor for the whole, but, among one another, each is only liable for his share; therefore, if one pay more than the others, he may sue the others for contribution.

If one become bankrupt or insolvent, and can pay nothing, each of the others is, at law, only liable to contribute to the extent of his original proportion; but in equity, *i. e.* in Chancery, each is liable for as large a proportion as if the bankrupt or insolvent had never been reckoned among the number.

11. The acceptor for honor (see chap. iv, sec. 8) is a surety for the person for whose honor he accepts, whether drawer or indorser, and for all parties antecedent to him.

It is not till the bill has been presented for payment to the drawee, when due, that the acceptor for honor becomes primarily liable to all parties subsequent to him for whose honor he accepts. When the bill accepted for honor has been presented for payment to the drawee and dishonored, the holder may sue the acceptor for honor.

But the latter is, as between himself and the person for whose honor he accepted and parties antecedent to that person, a mere surety; and therefore, when he has paid the bill, he can compel any of such parties to reimburse him.

And the holder must not discharge the person for whose honor the bill was accepted, or any person prior to him, for then the acceptor for honor, being but a surety, will be discharged.

CHAPTER XIII.

NOTICE OF DISHONOR.

1. *Necessity for and object of the Notice.*
2. *Tenor of the Notice, with Examples and Form.*
3. *Who alone can* give *an effectual Notice.*

4. *Who are entitled to* receive *Notice.—Best course for holder to take.*
5. *Time within which Notice must be given, and reasons for advice given in last section.*
6. *Banker or Agent is a separate party as regards time for Notice.*
7. *Mode of sending Notice, and Evidence.—Caution to prevent failure of proof.*
8. *Notice personally served in writing.*—Verbal *notice.*
9. *On whose behalf given.*
10. *Need not be personal.—Clerk, wife, &c.*
11. *Party bankrupt or dead.*
12. *Party guaranteeing Bill.—Party liable on Bond or Mortgage as well.*
13. *Notice to one of several who are jointly liable, is Notice to all.*
14. *Notice should be posted so as to* arrive before writ is issued.
15. *Principle on which Notice is required, and herein of circumstances that will excuse Notice.*
16. *Promises, Admissions, and Agreements, which will dispense with Notice.*
17. *Holder's ignorance of a party's residence.*
18. *Accident, Illness, Lost Bill.*
19. *Implied consent to dispense with Notice.*

1. When acceptance of a bill is refused on presentment for that purpose, or when payment of a bill or note, on its being presented when due, is refused by the acceptor or maker, the holder cannot sue the drawer and indorsers of the bill or the indorsers of the note, unless they each of them receive within a certain time notice of dishonor, which is a means of communication substituted, in this country, for notarial protest.

[As to notice of dishonor for *non-acceptance*, see chap. vii, sec. 1.]

The object of the notice is both to apprise these parties of the fact of dishonor, and to let them know that they will be called upon to pay.

2. It is advisable to give the notice in writing, though it is sufficient if only verbal.

The principal reason why the notice should be in writing, is to make sure of its being distinct, and that it may shew, if produced, that it gives the desired information.

To shew the requisites of a notice of dishonor, the following examples of notices are given, with reasons for their goodness or insufficiency.

To begin with insufficient notices:—

"Your draft upon A. B. lies at my house due and unpaid," is bad, because it is quite consistent with the notice that the draft may never have been presented for payment, nor even have been accepted.

"Your draft upon A. B. accepted by him, lies at my house due and unpaid," is bad, for it does not state presentment for payment.

But "Your draft upon A. B. accepted by him has been duly presented for payment, and lies at my house due and unpaid," will do, for it gives every essential information.

In the same way, "Your bill (or note) is returned dishonored," is a perfect notice, for the word *dishonor* implies both acceptance and presentment.

Again, a statement that a bill or note is unpaid, and that the *charges* or the *noting* come to so much, is a good notice by implication; for these words clearly indicate acceptance (of a bill), presentment, and non-payment, or in the case of a note, presentment and non-payment.

From these examples it will be seen that though no particular form is necessary, yet the choice of words is a matter of great importance.

The following is the form given in Mr. Justice Byles' work, and it will at once be seen to be an amply sufficient notice from the holder to an indorser, and may be altered according to circumstances.

No. 1, Fleet Street, London;

SIR, 26th Sept., 1842.

I hereby give you notice, that the Bill of Exchange, dated the 22d ult., drawn by A. B. of ———, on C. D. of ———, for £100, payable one month after date to A. B. or his order, and indorsed by you, has been duly presented for payment, but was dishonored and is unpaid. I request you to pay me the amount thereof.

I am, Sir, your obedient Servant,

G. H.

To Mr. E. F. of ———, Merchant.

If the notice may apply equally to more than one bill, it lies on the defendant to prove this fact. In case of misdescription of an instrument, as by calling a note a bill, or *vice versa*, or transposing the names of the drawer or acceptors, &c., it is no objection, unless mistake or

inconvenience have arisen, which it lies on the defendant to prove.

3. The person giving the notice, though he need not be the actual holder, must be not only a party to the bill or note, but one himself liable, or capable of being liable, to pay the money. Thus, a notice is insufficient if given by a party who, not having himself received notice in due time, is discharged by the negligence of the party antecedent to him. For example, if the holder of the bill, being the second indorsee, have not given notice in time, or at all, to the first indorsee, a notice by the first indorsee to the drawer will not entitle the holder to sue the drawer.

4. All parties are entitled to receive notice, save the maker of a note and the acceptor of a bill; and the best thing for the holder of a dishonored bill to do, is to give notice at once by post to all the indorsers, and, in case of a bill, to the drawer also.

5. This brings us to the time allowed for giving notice. The rules for this are as follows:—

Where the person giving the notice and the person to whom it is sent both live in the same place, the notice must be given so as to be received the next day after dishonor, or after receipt of notice of dishonor.

Where they both live in different places, the notice must arrive as early as a letter would arrive, if posted on the next day after dishonor, or after receipt of notice of dishonor.

This is the best course for the holder to adopt, for it makes sure that each of the parties receives notice in due time. This time is reckoned on the supposition that each party, from the holder upwards, gives notice to the party from whom he has taken the bill, and the time allowed for each notice is dependent on whether the giver and recipient of it live in the same or in different places.

Now, it is plain that if the holder gives notice only to *his* indorser, the power of the holder to sue any other party will depend on whether the indorser is prudent or diligent enough to give notice to the person from whom *he* received the bill, and so on through all the parties up to the drawer.

So that, if the holder has not himself given notice to the person whom he sues, it will be necessary to prove the due transmission of notice through each of the prior parties, and that, too, in proper time—for the diligence of one is not to compensate for the negligence of another;

i. e. if any party is himself discharged for want of punctual notice, a notice from him can in no case bind another party. (See sec. 3.)

Hence the advice given to the holder to give notice at once by post to as many prior parties as he is able to send to.

6. It may be here mentioned that when the bill is in the hands of an agent, as an attorney or banker, he is considered as a separate party, as regards time for giving notice.

7. The usual way of giving notice, particularly where the parties live at a distance, is by post, for it not only has the advantage of the distinctness of a written communication; but if the letter is properly addressed and miscarries, the sender of the notice does not lose his rights, and *has merely to prove the posting* of the notice.

In order to prove the sending of the notice, it is necessary to call as a witness the person who posted it, and also the writer or some one else who can speak to its contents; it is therefore as well that the writer should also be the poster. It will be sufficient proof of posting, however, if the writer of the notice deposes to putting it in a box or on a table for posting, and a servant afterwards deposes that he always posts all the letters so placed.

It may here be as well to give this caution to prevent the failure of evidence of notice. If you have made a copy of the notice, or an entry or memorandum of the writing or posting of the notice, of which, from the multiplicity of your business or from other reasons, you have no *independent* recollection, you should bring the copy or memorandum into court, for it will not be sufficient to have refreshed your memory with it previous to giving evidence. If you have an independent recollection, of course all reference to the copy, memorandum, or entry, is unnecessary.

The notice should be sent to the residence or place of business of the person for whom it is intended. If the notice reaches him it does not matter whether it be rightly addressed, and if it be rightly addressed it will be treated as if it had reached him, though he truthfully denies it, for the sender is not to suffer by the failure of the post.

If the notice be sent to the address of the party given on the bill it will be treated as having reached him,

though he truthfully denies it; so also if a mistake be fairly made in the address, owing to the illegibility of the writing on the bill.

8. Notice may be personally served in writing, or may be left in writing at the residence or place of business of the party, or it may be delivered by word of mouth to the party himself or to his clerk at his place of business. In all these cases the person taking the notice must prove its delivery; and if it be in writing, one person may prove the writing and another the delivery.

9. The notice need not state on whose behalf it is given; but if it is stated to be given on behalf of any person, the receiver of the notice will be discharged from liability if, for any reason, he cannot be sued by the party on whose behalf the notice is said to be given; for instance, if it be sent by an early indorsee, who has not himself had notice, and is therefore discharged. (See sec. 3.)

10. Notice need not be personal, but will be sufficient if given to the clerk of a man of business at his office, or in case of a man not in business, to his wife at his house, for a man who becomes a party to a bill or note is expected to leave some one at his house or office capable of receiving notice. But it would not be safe to give notice to the clerk or wife of a party anywhere else than at his office or house respectively.

11. If a party be bankrupt he must still have notice, and so should his assignees if appointed, and in case the bankrupt have absconded, notice should be given to the messenger in possession.

If a party be dead, notice should be given to his personal representatives.

12. To one who has merely guaranteed the payment of a bill or note, notice need not be given unless he has contracted to receive it, or would be prejudiced by the absence of it.

If a man is liable on a bond or mortgage, or other independent instrument, and also as indorser of a bill or note for the same consideration, he may be sued on the deed without notice of dishonor of the bill.

13. Where two or more parties are jointly liable on a bill (see chap. xix, sect. 1, 2), notice to one is sufficient, whether they be general partners or not.

In the same way, if A draw on A, B, and C, notice of dishonor to the drawer is unnecessary, for, being also

an acceptor, he has himself been one of the parties who have dishonored the bill.

14. When we speak of notice of dishonor being necessary, we shall of course be understood to mean that it must be delivered before action brought, so that if there is any doubt about the writ being issued before the letter containing notice would in due course have arrived, the plaintiff will be nonsuited.

15. The reason why neglect to give notice discharges from all liability each party who should have received notice, is that, after a reasonable time, such parties may fairly presume that the bill or note is satisfied.

The drawer in particular would be injured if he were compellable to take up the bill without notice of dishonor, for the drawer is presumed to have effects in the hands of the drawee; and if the drawer have timely notice of dishonor, (whether by non-acceptance or non-payment,) he may be able to withdraw his effects from the hands of the drawee or acceptor.

And this brings us to the consideration of what state of facts, or conduct of parties, will *excuse* the holder from giving notice of dishonor.

The rule is, that every party is entitled to notice of dishonor who, when called upon to pay, may have any right to recover against any other party to the instrument. It is because they never come within this rule, that an acceptor or maker are *never* entitled to notice, being always, as regards the public, primarily liable.

By this rule, if the drawer has *at no time* during the currency of the bill had effects in the acceptor's hands, *i. e.* if the bill was accepted for the drawer's accommodation, and has always remained an accommodation bill, the drawer need not have notice of dishonor, for there is no one whom he can sue on the bill.

But if the bill was for the accommodation of the *acceptor*, the drawer will be entitled to notice, for, on paying the bill, he can sue the acceptor.

So, if the bill were for the accommodation of an indorser, the drawer will be entitled to notice, for, on payment, he can sue the indorser.

In case of a note, a corresponding state of facts can hardly occur.

16. But by promising to pay, a man waives his right to insist on the absence of notice, and it is the same though

the promise be made under a mistake of law, for all are presumed to know the law; but it will not be binding if made under a mistake of *fact*.

For example, if at the time the man made the promise to pay an overdue bill he supposed the bill to have been presented, while in truth it had not, the promise would not waive his right to insist on want of notice.

And the promise need not have been made to the plaintiff who sues on the bill, but will be binding, though the defendant have made it to a stranger, not a party to the bill.

If a party to the bill or note promise, before it is due, to pay it if dishonored, this does not dispense with notice, for it presumes notice will be given, and promises nothing but what the law would enforce. But if he tell the holder that he will call at the acceptor's and see if the bill be paid at maturity, this amounts to a consent to dispense with notice.

An agreement to dispense with notice binds the parties to the agreement, but leaves unaltered the necessity of sending notice to the others.

Sometimes a promise to pay, or part payment, have been treated not so much as a dispensing with notice, but as presumptive evidence that notice has *been received*, though a jury are not bound to draw the inference.

So, where the defendant had said to one who might have been entitled to sue, "I have been cheated out of the bill, and do not intend to pay;" and also where the defendant said that he did not mean to rely on the *informality* of the notice, notice of dishonor was in both cases presumed.

A statement by the drawee that he shall not meet the bill, and warning from him to the drawer to that effect, will not excuse notice, unless the drawer consent to dispense with it.

Where the drawer, having supplied the acceptor with goods, draws a bill on him, not payable before the goods may be expected to arrive, the drawer may be considered to have reasonable expectation that the bill will be honored, and this is equivalent to having effects in the acceptor's hands. There are other circumstances, too minute to be detailed at length, which will be considered to amount to reasonable expectation of payment, so as to entitle the drawer to notice, though there be no actual effects in the drawee's hands.

A drawer who himself made a bill payable at his own house, has been held not entitled to notice, for it might be presumed to be for his own accommodation.

The circumstances above laid down are, it will be seen, not patent *on the face* of the bill, but dependent on relations between the parties, which may or may not be accurately known to the holder.

It is therefore advisable not to rely on the excuses above mentioned, but, where practicable, to give notice to all parties, except the acceptor or maker.

17. The holder's ignorance of a party's residence will excuse notice of dishonor, provided due diligence be used to find out such residence; and due diligence is a question for a jury.

18. An accident, or an illness happening to the holder, will also be an excuse, so long as it incapacitates him from business.

Although a bill be lost, notice of dishonor must be given, for the bill may be paid with or without an indemnity, and may be even sued upon, if an indemnity is given to the satisfaction of the Court.

19. As before observed, where a party has agreed or consented to dispense with notice, the holder will be excused from giving it. And this agreement or consent may be by inference as well as direct expression; as where, before a bill was due, the holder was told by the drawer that he would call at the acceptor's and see if the bill was paid, this was held to dispense with notice of dishonor.

CHAPTER XIV.

OF THE ALTERATION OF BILLS AND NOTES.

1. *A material alteration, though by consent, renders the instrument useless.*
2. *What is a material alteration?*
3. *Different effect of alteration by indorsee and by drawer or payee.*
4. *Bill substituted for altered bill.*
5. *Alteration appearing on the face of the bill*
6. *Hints for avoiding difficulties.*

1. It is a rule that all instruments in writing, and bills of exchange, and promissory notes among the number, are rendered void by any alteration in a material part, whether

made by a party to the instrument or by a stranger, unless all parties consented thereto.

But there is this further objection to the alteration of bills and notes, which makes them, when altered in a material part, useless altogether: namely, that the instrument as altered requires a new stamp, by virtue of the Stamp Acts; and this stamp is, by the same acts, prevented from being affixed to the bill or note after it has once been drawn or made.

An alteration in a material part, whether with or without consent, is, therefore, an *insuperable* obstacle to an action on the instrument, even in the hands of an innocent holder for value.

As the consent of all parties makes no difference, it is hardly necessary to say that the same result will follow, though the alteration be to the disadvantage of the party making it.

2. For the reasons above stated, it becomes of the *utmost importance* to a party taking a bill or note on which any change appears to have been made, to know (1) whether it arose from a slip of the pen, and (2) if not, whether it is a material alteration.

All changes in the date, the time of currency, the rate of interest, or the consideration, are material alterations within the rule.

The rule, however, does not apply where, though the bill has been drawn, yet it is still *in fieri, i. e.* does not yet exist as a complete available security; as if the draft were sent to the drawee for acceptance, and the latter before accepting requested further time, and the date or the time of currency were changed by the consent of the drawer and drawee.

So also a mere mistake may be corrected without infringing the rule, as, for instance, an obvious mistake in the date, or the omission of the words "or order." So a blank for the payee's name may be filled up by the person to whom the bill or note has been given, and who is meant to be the payee.

3. A material alteration *by an indorsee* not only makes the instrument void, but actually *extinguishes the debt;* for if the indorsee could compel payment from his indorser, the latter would bear the whole loss, being unable to recover from any other party. [But this does not apply to a conversion of a blank into a special indorsement. See chap iv, sec. 4.]

A material alteration by the drawer or the payee of a bill or the payee of a note, merely renders the instrument void, but does not extinguish the debt.

4. A party is not liable on a substituted bill given in renewal of an altered bill, unless he knew of the alteration at the time of giving the substituted bill.

5. Where an alteration appears on the face of a bill or note, it lies on the plaintiff who sues on it to show under what circumstances it was made, so as to satisfy the jury whether it was a mere correction of an error, or was made while the instrument was *in fieri* (see above, sec. 2), or was a material alteration made after the bill or note was complete.

6. It is therefore advisable that persons drawing a bill or making a note, should make every correction, as far as possible, explain itself, as by passing the pen through a word meant to be omitted, instead of erasing or completely obliterating it.

And if it is impossible to do this, as in the case above stated, of the acceptor refusing to accept unless the date or time of currency be altered, it is advisable in practice either to get a new stamp and draw the bill afresh, or, at least, to append a note at the back of the bill, signed by the acceptor, stating the alteration to have been at his request, and before acceptance.

With reference to the amount, if a change should be required, we have already seen under the head "qualified acceptance" (chap. vi) that the acceptor may reduce the amount by accepting for part only.

CHAPTER XV.

OF INTEREST.

1. *From and to what time.*
2. *Amount.*
3. *Miscellaneous matters.*

1. Interest is seldom expressed to be payable on the face of the bill or note, but when it is so expressed it is counted *from* the date of the *drawing* or *making*, and it is the same with a bill or note payable at demand.

When the bill or note is silent as to interest, it is counted from *maturity*, and in the case of a note payable on demand, from demand.

When the first demand made is by commencing an

action, the interest is reckoned from the service of the writ. As against an indorser, interest is only counted from delivery of notice of dishonor.

Interest is counted *to* the time of payment, but ceases after a tender.

2. The offence of usury is abolished, and therefore any amount of interest is recoverable if made payable by the instrument.

If the instrument is silent, five per cent. is the amount usually allowed, but if the principal might have been paid earlier but for the negligence of the plaintiff, a jury may diminish or altogether withhold interest.

3. If a party is liable by agreement to give a bill, (as for the price of goods sold,) he cannot escape his liability to interest by not giving the bill.

A party who guarantees the due payment of a bill is liable to interest.

A plaintiff may not only sue for interest originally, but may continue his action for it after the principal has been paid.

CHAPTER XVI.

OF FORGERY AND FALSE PRETENCES.

1. *What?*
2. *Certain acts which amount to forgery.*
3. *Certain acts which do not amount to forgery.*
4. *Rights of parties giving and receiving forged bills and notes, and paying money upon them.*
5. *Money paid under mistake of* fact *may be recovered back.*
6. *Obtaining signature to bill or note by false pretences.*

1. Forgery is a felony punishable by penal servitude for life.

2. Without giving a definition of this crime, or laying down the general principles respecting it, it will be enough here to mention a few acts with reference to bills, notes, and cheques, stating whether such acts do or do not amount to forgery.

The following acts have been decided to amount to forgery, if done with fraudulent intent.

The writing by one man the name of another.

Writing the name of a fictitious person.

Writing a promissory note over the genuine signature of another, though on unstamped paper.

Writing a man's own name with intent that it should pass for another's.

Filling up a blank cheque with an unauthorized sum.

Obliterating, adding to, or altering the crossing of any cheque with intent to defraud. (See chap. xxi, sec. 11.)

Uttering any cheque so obliterated, &c., with intent to defraud.

Altering a bill, note, or cheque, whether by addition, subtraction, or substitution.

Where several join in a forgery each forges the whole instrument.

3. The following acts do not amount to forgery.

Writing words amounting to a bill or note over the signature of another purposely given, whether on stamped paper or not.

Drawing a bill upon a person with false addition or description to that person's name.

Uttering a bill, &c., by a man who represents that a signature on the bill is his when in truth it is another's.

Writing another's name, with the words "per procuration," without authority.

Drawing or making in *another's name* a bill or note for less than 20*s*., or one for less than £5, without complying with the statutory requisites, (see chap. xix, sec. 6,) for such instruments are simply void.

But informalities, or the absence of a stamp, do not prevent an offence amounting to a forgery.

4. With regard to the rights of parties giving, receiving, and paying upon forged bills, notes, and cheques, space will only allow of following general rules.

A *bona fide* holder for value cannot sue upon a forged bill or note, or even keep it against the man whose name is forged.

Therefore, if the acceptor or maker pay to a person who derives his title through a forgery, the payment is no discharge; that is, the acceptor or maker may be obliged to give up the instrument to the true owner, and may be sued either upon it or upon the consideration.

Where a forged addition has been made to the sum for which a bill, note, or cheque was really made payable, a banker paying the whole cannot charge his customer for more than the original sum.

Nor would the acceptor or maker, if he had paid it, be able to take credit for it in his account with the drawer or payee.

But if the banker's customer gave occasion to the forgery by his own negligence, as by drawing a cheque for fifty pounds and leaving room for the words "*three hundred*" to be placed before the fifty, then the banker on paying the cheque *bona fide*, may take credit for the payment.

In the same way, an acceptor of a bill is not to be the loser, if he accept and afterwards pay a bill, so rendered capable of alteration by the negligence of the drawer.

It has already been seen (see chap. iv, sec. 10,) that even when a bill or note is *sold*, (as when it is given on the purchase of goods at the time of such purchase,) there is an implied warranty that all the signatures are genuine.

5. There is also an important principle of law that money paid under mistake of *fact* may be recovered back, though it is otherwise as to money paid under a mistake of *law*. This principle regulates the dealings with forged instruments.

Suppose money to be paid in consideration of a bill of exchange being indorsed to the person paying the money; *i. e.* suppose the bill to be discounted, the transferee may recover back the money on discovering the forgery, if, as would usually be the case, he were guilty of no negligence, and believed the signatures to be genuine.

So also if, though there be some negligence on the part of the person paying, yet he be thrown off his guard by an assertion or implied assertion on the part of the person who requests him to pay, the money may be recovered back, at all events if notice of the forgery were given to the holder in time for him to give notice of dishonor to the other parties.

6. Any person who, by any false pretence, obtains the signature of any other person to any bill, note, or valuable security, with intent to cheat or defraud, is guilty of a misdemeanor, and liable to penal servitude for four years, or to either fine or imprisonment, or both.

CHAPTER XVII.

OF THE STATUTE OF LIMITATIONS.

1. *Actions must be brought within* six years.
2. *Exceptions in favor of persons under disability.*
3. *The Statute must be* pleaded.—*Form of* Notice *in the County Court.*

4. From *when, under various circumstances, the six years is counted.*
5. To *when it is counted.*
6. *How to prevent the operation of the Statute.*
7. Acknowledgments *and* payments *may give another six years in which to sue.*
8. *Effect and requisites of such* acknowledgments.
9. *Effect and requisites of such* payments.
10. *Acknowledgments may be made to a stranger.*
11. *Hints for securing proof of the payments abovementioned*
12. *Note twenty years old.*

1. By a statute passed in the 21st year of King James the First, and the modifications introduced by an act of the 19th and 20th year of the present reign, all actions on simple contracts (*i. e.* not founded on instruments under seal), which, of course, include those on bills, notes, cheques, &c., must be commenced within six years after the right to bring the action accrued.

2. To this there are exceptions in favor of plaintiffs who, at the time of the accrual of the cause of action (*i. e.* the right to sue), are under disabilities, as infants, married women, or persons of unsound mind, who have six years, after the cessation of these disabilities, within which they may bring their action.

There is no longer an exception in favor of persons absent abroad.

Thus, an infant has six years after coming of age; a married woman, six years after the termination of the marriage by death or divorce; and a lunatic, six years after becoming of sound mind.

3. The Statute must be *pleaded* by the defendant, if he wishes to take advantage of it, and he will then allege in his plea that the cause of action on which the plaintiff is suing did not accrue within six years, and if this is made to appear from the evidence adduced by either party, the plaintiff's remedy is barred.

In the County Court, where a defendant intends to rely on the Statute of Limitations for his defence, he must give notice thereof, in writing, to the Registrar of the Court, at least five *clear* days before the day when the defendant is ordered by the summons to attend in court.

The notice may be in the following form:—

In the County Court of Warwickshire, holden at ———.
Between A. B., Plaintiff, and C. D., Defendant.
Take Notice, that at the hearing, I shall rely on the following ground of defence:
That the claim for which I am summoned is barred by a Statute of Limitations.
Dated this day of 1858.
(Signed) C. D., Defendant.
To the Registrar of the Court.

4. The time is counted, or, in legal language, the Statute *begins to run* on bills or notes from the first day that an action could be brought upon them.

On a bill or note, payable a certain time after date, the action can be first brought on the day of dishonor.

The action on a bill accepted, payable on a certain event, as the paying off of a Queen's ship, &c., can be first brought on the happening of the event on which the instrument was payable.

If a note is payable by instalments, but upon any default then the whole to be due, the action can then be brought upon the first default.

But, if the administrator of a party to a bill or note have not taken out letters of administration till after the bill or note became due, then the six years will only count against the administrator from the time of his taking out letters of administration.

If a bill or note is payable at, or a certain time after *sight*, no action can be commenced until presentment, or exhibition to the maker.

But, if the instrument be payable "on demand," (no demand being necessary to entitle a person to sue, *i. e.* the action being itself a sufficient demand,) the six years will count from the date of the bill.

If an accommodation acceptor, having paid the bill, is suing the drawer, the plaintiff can sue within six years from the time of paying the money.

If acceptance of a bill be refused, and afterwards at maturity it be not paid, the six years counts from the refusal to accept.

If the Statute have run out against the holder of a bill or note, his transferee is in no better position.

5. The six years, in order to operate as a bar, must have expired before the commencement of the action, *i. e.* in the Superior Courts before the issuing of the writ, and in the County Courts before entering the plaint.

6. The operation of the Statute can be effectually pre-

vented by issuing a writ from the Superior Courts, and getting it renewed *every six months* by having it stamped anew with the seal of the Court.

In the County Court, for the same purpose, successive summonses may be issued without leave of the Court, the first and each successive summons remaining in force for *twelve months*, and no fee being required for the subsequent summonses, nor any service of either the original or subsequent summonses.

7. Certain acknowledgments and payments have the effect of taking the case out of the Statute (*i. e.* preventing its operation), and give the plaintiff another six years within which to sue, counting from the date of such acknowledgment or payment, and they have this effect whether made *before* or at any time *after* six years from the accrual of the original debt.

8. These acknowledgments must be in writing, and signed by the party whom it is sought to make liable (*i. e.* the defendant), or by some person authorized by him.

A clerk, a wife, or an infant, may be an agent for this purpose.

In case of persons liable jointly, or jointly and severally, as drawers, acceptors, makers, &c., no acknowledgment or payment will bind any one but the person making it, unless, of course, it were made with the authority of the person liable jointly with him, as it would often be in the case of ordinary partnerships, when the acknowledgment was signed or the money paid in the name or on behalf of the firm.

No acknowledgment need be stamped, unless it amounts to a promissory note, an agreement, or a deed. (See chap. xxii.)

A simple acknowledgment of a sum due is presumed to mean a promise to pay, though it may be written, as often happens in correspondence, without any such intention; but, of course, the promise of payment must not be repelled by any expressions in the acknowledgment.

If the acknowledgment do not state expressly or point out by reference, some particular sum, as by referring to a bill or note, or the balance due upon it, &c., the sum due may be supplied by verbal evidence.

If the acknowledgment contain no date, the person receiving it should preserve the date in his memory, by making a memorandum on the back, which is not, however, in itself evidence

9. A payment, in order to take a case out of the Statute, should appear to be part payment of a larger sum, of which a portion remains due, and to be made on account of the debt sued for.

A devise, or bequest for the payment of the debt due to a *specified* creditor, will take the debt out of the operation of the Statute.

An executor is not bound, except by an express promise.

Where a debtor owes some debts which are barred, and some which are not, and makes a general unappropriated payment, such payment will not take the barred debts out of the Statute, unless the creditor, by notice, appropriates the payment; (as to which, see chap. x.)

Giving a bill or note may amount to payment or acknowledgment. Goods treated as money are a sufficient payment. When on one or both sides of an account there are items which are barred by the Statute, and a settlement of the account takes place and a balance is struck, the process of forming a balance by both parties is regarded as a mutual payment, and takes the case out of the Statute, as regards the balance, which may, therefore, be sued for by the person in whose favor it stands.

10. The acknowledgment need not be made to the plaintiff, nor, indeed, to any party to the bill or note. Thus, a letter from one joint acceptor to his co-acceptor, or a deed between a party to the bill and a stranger, reciting that the bill is outstanding and unpaid, may amount to an acknowledgment against the persons writing the letter, or executing the deed respectively.

11. Payment may be proved like any other fact. An entry or memorandum, or a statement made by the party paying, will be good evidence against him by way of admission in proof of such payment.

But, no entry of part payment made on a bill or note, by the party receiving the money, will be evidence of such payment, so as to prevent the Statute from running.

Mr. Justice Byles, in his work on bills, advises that the debtor should write the memorandum of part payment, whether of principal or interest, on the back of the bill or note, and that he and the creditor should both sign it, and thus the rights of both will be protected.

Payment of interest takes the principal out of the Statute, and part payment of principal (in the case of bills and notes) has the same effect upon interest.

12. Independently of the Statute, there is a presump-

tion that a note twenty years old (not being a bank-note) is paid.

CHAPTER XVIII.

OF SET-OFF.

1. *Of the right to set-off debts.*
2. *General requisites of debts which are to be set-off.*
3. Mutuality *of such debts.*
4. *Position of* surviving partner *as to set-off.*
5. *Joint and several debtor sued alone for his joint and several debt.*
6. *Husband's right of set-off when sued for his wife's debt.*
7. *In Bankruptcy.*

1. A defendant sued for a liquidated money demand, is permitted, but not obliged by law, to set-off against the sum which plaintiff claims, any liquidated money demand due from the plaintiff to the defendant.

2. Both the plaintiff's claim, and the defendant's set-off, must be liquidated money demands.

The defendant's set-off may be of a less or a greater amount than the plaintiff's claim.

Instead of pleading a set-off, the defendant may, if he likes, bring a cross-action, or he may do both, but if he is successful on the plea in the original action, the judgment in the cross-action, if in his favour, will be proportionally reduced.

One judgment may be set-off against another.

The debt to be set-off must be one recoverable in a Court of Law, without the help of a Court of Equity.

It must be a subsisting legal debt, and not one the remedy for which is barred by the Statute of Limitations, or one which is satisfied by the discharge of the debtor out of custody.

The debt must have been due at the commencement of the action, and must remain due at the time of trial.

A bill or note, for example, to be set-off, must have been due and unpaid in the defendant's hands when the action was commenced, and must remain in his hands at the trial.

3. The debts must be mutual—that is, they must be due to the defendant or defendants alone, from the plaintiff or plaintiffs alone.

[But it is not meant that the defendant must be unable

to sue any one else than the plaintiff; for, on a bill, for instance, there might be several others who could be sued. Defendant may set off a sum due on plaintiff's *joint and several* note against plaintiff's demand.]

For example, if A and B sue D, D can set-off a debt due to him from A and B, but not one due to him from A alone, or one due from A, B and C.

So also if the debt were due from A and B, not to D alone, but to D and E, then the debt could not be set-off by D.

4. But the debts and credits of a firm are vested at law in the surviving partner, who is then in the same position as regards set-off as if the other parties had never existed.

For example in the above case, suppose D and E were partners, and E were dead, D, though the sole defendant, and sued for his private debt, might set-off a sum due by A and B, the plaintiffs, to the firm of D and E. And the reason of this is to save the trouble of cross-actions; for though the debt did not originally accrue to D alone, yet D is now the only person who could sue for it.

5. If A sue B alone, B may plead that the money is owed by him, together with C, and that a set-off is due from A to B and C.

6. With regard to the set-off which a husband may plead, and to which he is liable in right of his wife, the following extract is given from "Byles on Bills:"—

"If a note be given to a married woman, the husband may either sue alone, or join his wife. If he sue in his own name, he is not liable to a set-off due from his wife before marriage, but he is to a set-off due from himself. If he join her, it should seem he is liable to a set-off due from his wife, but he is not to one due from himself."

7. In bankruptcy, all claims, whether for debt or for damages, may be set-off, however late they were contracted, if contracted without notice of a specific act of bankruptcy.

The debtor claiming the set-off may either go into the matter before the Commissioner, or bring a separate action against the assignees.

CHAPTER XIX.

OF THE FORMS OF BILLS AND NOTES.

1. *Distinctions between* joint *and* joint and several *notes.*
2. *Bills always joint.*
3. *No precise form necessary for bills or notes.*
4. *Other matter may be contained in bills and notes. without invalidating them.*
5. *Note may be payable to maker or order.*
6. *Bill and notes under* 20 *shillings.*
7. *Certain matters of form which are convenient, but not essential.*
8. *Bills must be* drawn *payable at all events and* unconditionally.
9. *Amount in* figures *at top of bill, how far of use—* written *words conclusive as to amount.*
10. *Time of payment—on demand—after sight.*
11. *Payee should be carefully described, and why.*
12. *Miscellaneous matters.*

1. Where two or more persons, not being partners, join in making a promissory note, it may either be a *joint* or a *joint and several* note. It is called joint when the words used express only one promise, though made by more than one person, as "We promise to pay, &c."; and it is called joint and several when, in addition to the joint promise of the two makers, the words express a separate or several promise of *each* maker, as "*We and each of us,*" or "*We jointly and severally* promise to pay, &c."

The first mentioned form is far preferable because, on a joint and several note, both makers may be sued together, or either separately, but upon a joint note, there being but one promise, both joint makers *must* be sued together, if the action is brought in the Superior Court, and a discharge of one is a discharge of the other (chap. xii, 8). In the County Court, however, either may be sued separately, or both may be sued, and only one served with process: then the one against whom judgment is given may recover contribution against his fellow.

2. Bills are always joint, and not several, being always directed to the drawees jointly and accepted jointly; but if a bill be accepted in the name of a firm, as "B. D. & Co." (and not jointly by each partner, as "A B, C D"), either partner may be sued without the other. (As to execution, see chap. xx, sec. 4.)

3 No precise form of words is necessary to constitute

a promissory note, but any language importing a distinct promise to pay at all events is sufficient, as "I undertake to *account* to A B or order for £50."

If there be no words amounting to a promise, the instrument is merely an I O U, or in some cases an agreement.

A bill should contain a distinct order to pay, and a note a distinct promise to pay, but no particular form is necessary in either.

Where a promissory note was in the words "I promise *never* to pay," the word *never* was struck out as being fraudulently inserted.

4. Other words may be contained in a note without invalidating it, as, for instance, a recital that deeds have been deposited by way of security for the payment of the money.

5. A man may make a note payable to himself or order, and indorse it, but he cannot make a note to himself and another man.

6. Though bills and notes are usually written in certain established forms (see Appendix), it may yet be as well to lay down a few rules by way of enabling the reader to distinguish between a mere irregularity and a fatal error or omission.

Bills and notes for less than 20 shillings are forbidden under a penalty, and are void.

7. It is usual and proper, but not strictly necessary, to write at the top of a bill or note the name of the place where it is made.

With the exceptions above mentioned, a date, though usual and proper, is not strictly necessary; but if the bill be payable a certain time after date, time will count from the day of the drawing or making, of which the payee should make a memorandum on the back to assist his memory, if the date be omitted.

8. It may here be stated that it is essential that a bill or note should be drawn payable, either at some fixed date, or on the happening of an event which is certain to happen, as on the paying off of a Queen's ship.

And now that acceptances must be in writing, any condition on which the acceptor's liability is to depend must be in writing also, as "Accepted, payable on giving up bill of lading for 76 bags of cotton per ship R."

9. It is usual and proper to write in the body of a bill

or note in words, at full length, the sum for which the instrument is payable, thereby guarding against any mistake or alteration. It is also the practice to write at the top or bottom of the bill the same sum in figures; this is meant merely to assist the eye, but may nevertheless be useful to supply an accidental omission in the body of the instrument, as if the word *pounds* be omitted by mistake.

But in case there be any difference between the sum stated in figures and the written sum, the latter will *always* be considered as the sum contracted for; and a banker at whose house the instrument is payable will not be justified in paying attention to the figures.

10. The *time* of payment is usually stated both in bills and notes. An instrument which is silent on this point will be payable on demand. It has already been stated (see chap. vi, sec. 5) that the words after sight mean after sight testified by acceptance, *i. e.* after acceptance, and if acceptance of such a bill be refused, it is dishonored; but a *note*, being incapable of acceptance, it is, when payable after sight, to be merely *exhibited* to the maker. As to days of grace, see chap. viii, sec. 6.

11. In promissory notes, and bills not payable to drawer or his order, but to a third party as payee, the payee should be particularly described. But if the instrument gets into the hands of a wrong payee, he can neither sue, nor confer a title by transfer or indorsement. The payee need not necessarily be described by his name, but he may be described by his office, as "the master of the ship B," or "the trustee under A's will."

Where there is any doubt about the name, or where the name is common, it may be well to add the designation of the payee's occupation; and the word *junior* should be used to distinguish him from his elder relatives.

A person meant by the drawer to be the payee may fill up with his own name a blank left for the payee's name.

12. The words *value received* are not essential. The consideration may be stated in any other way or omitted altogether, but an *alteration* in the statement of the consideration will be such a material change as will invalidate the instrument for want of a new stamp. (See chap. xiv.)

A bill should be properly directed to the drawer, but when he has once accepted it he cannot object to a mistake in the direction. But a bill cannot be addressed to one man, and accepted by another, except for honor. (See chap. vi, sec. 8.)

A bill, though accepted, is of no use without the drawer's signature. A note may be signed by the maker in the body of the instrument, as "I, A B, promise to pay, &c."

If any place of payment is stated in the *body* of a note, it is payable there only. As to the place where bills are made payable, whether in the body or the acceptance, see chapters i and vi.

Where the drawee is directed to pay *as per advice*, or according to advice, it is not safe to pay without.

A promissory note must not be expressed to be payable out of a particular fund; but a fund may be mentioned in a bill, merely by way of direction to the drawee how to reimburse himself.

Indorsements, though properly made on the back of bills and notes, are not invalid if made on the face.

Instruments defective, as bills or notes, may still be evidence of agreements, in which case, if over £20, they will generally require a stamp of 2*s.* 6*d.*, which can be affixed after they are written.

A note beginning "I promise," and signed by more than one, is several as well as joint. (See sec. 1.)

It is no answer to an action on a *joint and several* promissory note, that one of the plaintiffs is one of the makers.

CHAPTER XX.

OF ACTIONS ON BILLS, CHEQUES, AND NOTES.

1. *Whether to sue in the Superior or County Courts.*
2. *Great facilities now offered in both these Courts.*
3. *Remedy on lost bills or notes.*
4. *Who must be sued? and of execution.*

1. Where it is desired to put the law in force to obtain payment of bills, cheques, or notes, the holder or his adviser must consider the expediency of choosing between the Superior Courts and the County Court, where the amount demanded is within the jurisdiction of the latter Courts.

If the amount sued for is within £50, or is, by relinquishing a portion, reduced to that amount, the action may be brought in the County Court. But wherever it is over £20 the defendant may remove it into the Superior Court. Wherever it is *not over* £20 the judge of the County Court has power, without consent, to order the amount to be paid by instalments, which often detracts considerably from the value of the remedy in these Courts.

2. The security afforded by bills, cheques, and notes, is considerably enhanced by virtue of a recent Act, which enables a plaintiff suing upon a bill or note, *within six months after it falls due*, to obtain a writ, which warns the defendant to get leave to appear and defend the action within twelve days, and states that unless such leave is obtained the plaintiff will have judgment and execution. This Act is extended to the County Courts.

The only way to obtain such leave is by paying the money into Court or by swearing an affidavit disclosing a defence upon the merits.

The plaintiff has still the option of adhering to the more dilatory remedy afforded by the ordinary action at law.

3. An action may be brought either in the Superior or County Courts, on lost bills or notes, upon giving an indemnity to the satisfaction of the Court.

4. Where two or more persons are sued, whether partners or not, (as to which see chap. xix, secs. 1 and 2,) execution may be levied on the property of either or both. But if only one of two or more partners is sued, all that can be taken under an execution will be his separate property, or his share of the partnership property.

CHAPTER XXI.

ON CHEQUES.

1. *General resemblance between Cheques and Bills.*
2. *Under Twenty Shillings Void.*
3. *Bankers' Obligation to Pay.*
4. *To be presented within reasonable time, and why.*
5. *How far a Cheque is Payment.—Proof of Payment thereby.—Tender of Cheque.*
6. *When evidence of an existing Debt.*
7. *Paying Bill by Cheque.*
8. *Drawer's Death.—Forged Cheque.*
9. *Cheque drawn by Partners,—and by several persons not Partners.*
10. Crossing *Cheques; why, and how to be done.*
11. *Of the Rights of the Drawer, Holder, and Banker, as to a crossed Cheque.*
12. *Of the Stamp.*

1. A cheque on a banker, being simply an order to the banker to pay money to the bearer, is an inland Bill of Exchange, payable to bearer on demand, and, for this rea-

son, requires no acceptance. The person signing the cheque is called the drawer. A cheque is, in general, subject to the rules which regulate the rights and liabilities of parties to Bills of Exchange.

2. A cheque for less than twenty shillings is no longer void or forbidden under a penalty; but such cheques are lawful, provided they are payable to bearer or to order on demand, and are drawn on a banker who shall *bonâ fide* hold money to the drawer's use.

3. A banker is obliged to pay cheques drawn on him by his customer, if he has money of the customer's sufficient to meet the cheque. But he would, probably, not be liable for refusing to pay a cheque, if his customer's money had only been paid in a few minutes before the cheque was presented.

4. A cheque, like a bill, must be presented within a reasonable time, which generally includes the day after it is issued.

All that is meant by this is, not that the drawer is always discharged, by failure to present within the time mentioned, but that if he be prejudiced by the delay (as if the banker fail), he will *then* be discharged. In fact, by keeping the cheque too long, the *holder* runs the risk of the bank failing.

The drawer is, in *this* sense, entitled to have the cheque presented within the time above mentioned, though the payee give it to his banker for presentment, or circulate it through several hands.

5. A cheque, unless dishonored, is payment; *i. e.*, a man having taken a cheque for his debt, cannot sue for the debt till he has presented the cheque, and payment has been refused.

To prove that a debt has been paid by means of a cheque, the banker must be called to prove that he paid it, and it must be shown to have passed through the hands of the creditor. For this reason, when a debt is paid by cheque, the person to whom it is paid should be requested to write his name on the back.

A person who has tendered a cheque in payment of a debt is in the same position as if he had tendered money, unless the tender was objected to *on the ground* of its being a cheque.

6. The mere possession by A of an unpresented cheque drawn by B is no evidence of a debt due from B to A.

But if the cheque has been presented and payment refused, it would be otherwise.

7. When an offer is made to pay a bill by a cheque, if the holder gives up the bill before cashing the cheque, he *may* be considered to rely entirely on the cheque, and then he would lose his remedy on the bill, if the cheque were dishonored.

8. A banker must not pay a cheque after the drawer's death, unless the banker be ignorant of the death, in which case he is justified in paying.

If a banker pays a forged cheque, the loss is his own, for he can only charge *his customer* with money paid upon *his* cheques, and the forged cheque is the cheque of a stranger; but the mere fact of an *indorsement* being a forgery does not throw the loss on the banker if ignorant of the forgery.

If the cheque be *in part* forged, the rule is the same; unless the customer, by his carelessness in drawing the cheque, have given opportunity for the forgery. (See chap. xvi, sec. 4.)

9. Each partner may draw cheques in the name of the firm; and, until the firm is dissolved, the banker is bound to pay such cheques, unless he have notice of a contract between the partners restricting the right to draw cheques.

The holder, if *bona fide* and for value, will have a right of action against the firm on the cheque, if dishonored, although wrongfully drawn by one partner.

Where several persons, having a joint account, but not constituting a firm, draw a cheque, they must all sign, unless one has authority to sign for the others; and if one has absconded, the Court of Chancery must be applied to. The same if the executor or administrator of one of them refuses to sign.

11. Cheques being payable to bearer on demand, it is very desirable when they are sent by post, and on other occasions, to take precautions against their falling into the hands of persons for whom they are not intended, who may present and obtain cash for them.

This can, in general, be effectually done by writing across them the name of a banker, or, between two transverse lines, the words "and Company," or "and Co." These words should be distinctly written across the face of the cheque. The cheque may be crossed in either of these ways by the drawer or by any subsequent lawful holder who receives it uncrossed; and if, when the latter receives it, it is only crossed "and Company," or "and Co.," he

may insert the name of any banker to or through whom he wishes the cheque to be paid; and this will have the same effect as if the crossing had been written by the drawer.

The effect of crossing the cheque will be, that the banker on whom it is drawn will not be justified in paying it except to *another banker;* and if he does so, he not only cannot take credit for it, but is liable to an action by his customer, if the wrong person gets the money. If the cheque is crossed with the name of a particular banker, it can only be paid to or through that banker.

Thus, the original bearer or holder of the cheque, cannot obtain cash for it, except through his banker, or his friend's banker.

If the crossing be so erased by some dishonest person that the cheque may, without negligence, pass for an uncrossed one, the banker is justified in cashing the cheque, if he has not noticed the crossing, and the loss must be borne by the customer. The question of the banker's negligence is, of course, for a jury.

A dishonest erasure of the crossing is a forgery. (See chap. xvi.)

The word *banker* of course includes any banking company.

12. By "The Stamp Act, 1870," all drafts or orders which entitle or purport to entitle any person, *whether named therein or not*, to payment by any other person of any sum of money therein mentioned, or to draw upon any person for such sum of money, must bear a penny stamp, either adhesive or impressed.

Thus, whether the cheque is drawn upon a banker or not, and whether payable to "Self," or to a number, or to the bearer, or to a person named or bearer, or to a person named or order—in fact, whatever form it may assume, it will require the stamp if the person on whom it is drawn is authorised to pay money upon it.

A few exceptions, however, relating chiefly to orders drawn by bankers themselves, and by public officers, will be found in the Appendix on Stamps.

The person affixing an adhesive stamp must cancel it by writing on or across it his name or initials, or the name or initials of his firm, together with the true date of his so writing; otherwise, if the cheque is produced in evidence, proof must be given that the stamp appearing thereon was affixed at the proper time.

CHAPTER XXII.

OF AN I O U.

1. *What it is, and general form.*
2. *Not Negotiable, being merely evidence of Debt.*
3. *Caution as to Stamp.*
4. *Should contain Creditor's Name.*

1. A mere acknowledgment of a debt does not amount to a promissory note.

Such an acknowledgment is frequently made in an abbreviated form, thus:—

London, 1st January, 1858.

To Mr. A. B.

I O U one hundred pounds. C. D.

An acknowledgment in this form is called an I O U, and is evidence that at the time when it was made, there was a balance of accounts in favour of the party to whom it was given, and for the amount specified.

2. Being merely evidence of the existence of debt, it requires no stamp. It is neither a promissory note nor a receipt, but, except that it cannot be negotiated and circulated, it has all the effect of a promissory note payable on demand; for a debt is acknowledged to be due, and may be sued for at any time.

3. It is always desirable to adhere strictly to the above form, for, if words be added expressing a promise to pay the amount on a particular day, the instrument would then be a promissory note, and could not be given in evidence without a stamp. Again, the addition of certain other words might make the document amount to *an agreement*, in which case, if over £20, it would require a stamp. In this case, however, there is less danger, for an agreement may be stamped after it is written, or even at the trial, on payment of a fine, but a promissory note cannot.

4. If the name of the person to whom it is addressed, does not appear on the I O U, it will, *prima facie*, be taken as evidence of a debt due to the person who produces it; but this the defendant may, of course, rebut.

To avoid difficulties, the creditor's name should always be mentioned, as in the form given above.

APPENDIX.

FORMS.

A short statement of the legal effect of the several forms is made, for the reader's convenience, to accompany this chapter; but, for fuller information, those parts of the work, which treat of the subjects in question, should be perused.

BILLS.

£100 0*s.* 0*d.* *Bristol, May 15th*, 1858.

Six months after date pay to me or my order the sum of One Hundred pounds, value received.

Accepted, Roger Thorpe.

To Mr. Roger Thorpe, Mercer, No. 1, Bucklersbury, London.

GEOFFREY STILES.

This bill is without indorsement, payable only to Geoffrey Stiles, the payee, who is also the drawer. When indorsed in blank by him, (*i. e.*, by simply writing his name on the back,) it becomes payable to bearer, but *may* be indorsed by any number of other persons through whose hands it circulates.

£100 0*s.* 0*d.* *London, May 16th*, 1858.

Six months after date pay to Oliver Kempe, or order, the sum of One Hundred pounds, value received.

Accepted, Payable at Messrs. Drummonds', Effingham Wilson.

To Mr. Effingham Wilson, Royal Exchange.

WALTER SMITH.

This bill is, without indorsement, payable only to Oliver Kempe, the payee. When indorsed in blank by

him it becomes payable to bearer, but may be indorsed by any number of persons through whose hands it circulates.

[With regard to special indorsements, converting blank into special indorsements, so as to avoid liability, and other matters connected with indorsements, see chapter iv, on "Transfers."]

If the words "*or my order*," and "*or order*," were omitted in the above bills, they would be payable only to Geoffrey Stiles and Oliver Kempe respectively. The words "*or bearer*" may be used instead of the above, and then the bill will be payable to whoever presents it.

Instead of the word "*date*," the word "*sight*" may be inserted, and then the bill will be payable six months after *acceptance*, and in that case a date should be appended to the acceptance. (See chap. vi, sec. 5.)

In the latter example above given, the words "*payable at Messrs. Drummonds'*," still leave the acceptance a general one, and, in order merely to charge the acceptor, the holder is not bound to present the bill anywhere; but to charge the drawer and indorsers, it must have been presented at the bank named.

But if the words "payable at Messrs. Drummonds', *and there only*," had followed the signature, the acceptance would be special, and the bill must be presented at the place named, even for the purpose of charging the acceptor.

[For further information, see chap. vi, on "Acceptance."]

£100 0*s.* 0*d.* *London, May 17th,* 1858.

On demand, pay to me or my order, [or to A B or his order] the sum of One Hundred pounds, value received.

RICHARD CROMWELL.

To Mr. Henry Moore,
No. 2, Fleet Street.

This bill needs no acceptance, but resembles in other respects the bills above mentioned.

PROMISSORY NOTES.

£50 0*s.* 0*d.* *London, May 18th,* 1858.

On demand, I promise to pay [at Messrs. Drummonds', Charing Cross] to Humphrey Reed, or his order, Fifty pounds, value received.

THOMAS MORE.

This note is payable generally, and may be presented anywhere, the same as if words in brackets were omitted, but to charge the indorsers, it must have been presented at the place named. But if, to the words in brackets there were added the words "*and there only*," the note must be presented at the place named, even for the purpose of charging the maker. The place where payable is sometimes written across like an acceptance.

Instead of *on demand*, the bill may be made payable so many days, weeks, or months after *date*, or after *sight*. After *sight*, in case of notes, means merely after *exhibition* to the maker.

JOINT AND SEVERAL PROMISSORY NOTE.

£50 0*s*. 0*d*. *London, May 19th*, 1858.

Two months after date, we and each of us, [or we *jointly* and *severally*] promise to pay to William Shakespere, or order, the sum of Fifty pounds, value received.

HUGH OLDHAM.
ARTHUR SMITH.

By omitting the words in the above form between "*we*" and "*promise*" the note may be made a joint note; but such a form would be found very inconvenient. (See chap. xix, sec. 1.)

A note beginning "*I* promise," and signed by more than one person, is several as well as joint. (See chap. xix, sec. 1.)

The words "*or order*," as in the case of bills, render indorsement necessary. Those words will be omitted with the same effect as in bills. Like bills, notes may be payable to bearer.

STAMPS.

The stamp duties at present payable on inland bills, cheques, and promissory notes, by virtue of "The Stamp Act, 1870," are as follows:

	s.	d.
Bill of exchange, draft, order, cheque, letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other of, or to draw upon any other person for, any sum of money therein mentioned, *payable on demand*	0	1
Bill of exchange of any other kind whatsoever (except a bank note), and *promissory note* of any kind whatsoever (except a bank note) drawn, or expressed to be payable, or actually paid, or endorsed, or in any manner negociated in the United Kingdom—		
Where the amount or value of the money for which the bill is drawn or made does not exceed . . . £5 .	0	1
Exceeds £5 and does not exceed . 10 .	0	2
„ 10 . . . . . 25 .	0	3
„ 25 . . . . . 50 .	0	6
„ 50 . . . . . 75 .	0	9
„ 75 . . . . . 100 .	1	0
For every £100, and also for every fractional part of £100, of such amount or value	1	0

Bank note—		s.	d.
For money not exceeding	£1	0	5
Exceeding £1 and not exceeding	2	0	10
" 2	5	1	3
" 5	10	1	9
" 10	20	2	0
" 20	30	3	0
" 30	50	5	0
" 50	100	8	6

These notes can only be issued by licensed bankers, who may re-issue them after payment as often as they please. These duties do not apply to Bank of England notes. See Schedule to Act of 1870.

THE FOLLOWING ARE EXEMPT FROM STAMP DUTY.

Drafts or orders drawn by any banker in the United Kingdom upon another banker in the United Kingdom not payable to bearer or to order, and used solely for settling accounts between them.

Letter written by one such banker to another such banker directing the payment of a sum of money, but not delivered to the person to whom payment is to be made, or to any one on his behalf, and not payable to bearer or to order.

Letter of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.

Bank of England notes; orders of the Accountant-General of the Court of Chancery in England or Ireland; warrants for payment of annuities granted by the Commissioners for the Reduction of the National Debt, or for any dividend or interest on Parliamentary Stocks or Funds; bills by the Lords of the Admiralty on the Accountant-General of the Navy; bills drawn for payment of Army pay or allowances from any public account; coupons attached to any security.

CROSSED CHEQUES ACT.

CHAPTER 81.

An Act for amending the Law relating to Crossed Cheques. [15th August, 1876.] A.D 1876.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. 1. This Act may be cited as The Crossed Cheques Act, 1876.

Repeal of Acts in schedule. 2. The Acts described in the schedule to this Act are hereby repealed, but this repeal shall not affect any right, interest, or liability acquired or accrued before the passing of this Act.

Interpretation. 3. In this Act—

"Cheque" means a draft or order on a banker payable to bearer, or to order on demand, and includes a warrant for payment of dividend on stock sent by post by the Governor and Company of the Bank of England or of Ireland, under the authority of any Act of Parliament for the time being in force :

"Banker" includes persons or a corporation or company acting as bankers.

General and special crossings. 4. Where a cheque bears across its face an addition of the words "and company," or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, and either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue. 5. Where a cheque is uncrossed, a lawful holder may cross it generally or specially.

Where a cheque is crossed generally, a lawful holder may cross it specially.

Where a cheque is crossed generally or specially, a lawful holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection.

Crossing material part of cheque. 6. A crossing authorised by this Act shall be deemed a material part of the cheque, and it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Payment to banker only. 7. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or to his agent for collection.

Cheque crossed specially more than once not to be paid.

8. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Protection of banker and drawer where cheque crossed specially.

9. Where the banker on whom a crossed cheque is drawn has in good faith and without negligence paid such cheque, if crossed generally to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in the same position, in all respects, as they would respectively have been entitled to and have been placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Banker paying cheque contrary to provisions of Act to be liable to lawful owner.

10. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same shall be crossed, or his agent for collection being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Relief of banker from responsibility in some cases.

11. Where a cheque is presented for payment, which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, a banker paying the cheque, in good faith and without negligence, shall not be responsible or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated, or having been added to or altered otherwise than as authorised by this Act, and of payment being made otherwise than to a banker or the banker to whom the cheque is or was crossed, or to his agent for collection being a banker (as the case may be).

Title of holder of cheque crossed specially.

12. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

But a banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

SCHEDULE.

ACTS REPEALED.

19 & 20 Vict. c. 25.	-	An Act to amend the law relating to drafts on bankers.
21 & 22 Vict. c. 79.	-	An Act to amend the law relating to cheques or drafts on bankers.

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